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New York State Senate

JOURNAL

OF

PROCEEDINGS OF THE SENATE

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IN THE MATTER OF

GEORGE W. SMITH,

JUDGE OF ONEIDA COUNTY,

IN RELATION TO CHARGES SUBMITTED TO THE SENATE BY THE GOVERNOR.

ALBANY:
VAN BENTHUYSEN & SONS, PRINTERS.
1866.

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JOURNAL OF THE SENATE.

STATE OF NEW YORK:

SENATE CHAMBER,
ALBANY, *June* 12, 1866.

The Senate met pursuant to a proclamation of His Excellency the Governor, in the words following:

STATE OF NEW YORK—EXECUTIVE DEPARTMENT,
ALBANY, *April* 21, 1866.

Whereas, the Senate of the State of New York, by resolution bearing date on the twenty-third day of March, A. D. 1866, requested me to call the Senate together in extra session, at the Capitol, on the second Tuesday of June following, for the purpose of proceeding to the trial of the charges against the County Judge of Oneida county:

Now therefore, I, Reuben E. Fenton, Governor of the State of New York, by virtue of the authority conferred by section 4, article 4, of the Constitution of said State, do order and proclaim that the Senate of the State of New York do convene in extra session, at the Senate Chamber, in the city of Albany, on the SECOND TUESDAY OF JUNE, A. D. 1866, at 11 o'clock in the forenoon, for the purpose of proceeding to the trial of the charges against the County Judge of Oneida county.

In witness whereof, I have hereunto signed my name and affixed the Privy Seal of the State, at the city of Albany, this [L. S.] twenty-first day of April, in the year of our Lord one thousand eight hundred and sixty-six.

R. E. FENTON.

By the Governor:

GEO. S. HASTINGS, Private Secretary.

The Hon. Thomas G. Alvord, Lieutenant Governor and President of the Senate, took the chair at 11 o'clock, A. M.

The Clerk of the Senate called the roll, when the following Senators were found to be present:

Messrs. Andrews, Chambers, Collins, C. G. Cornell, Crowley, Folger, Gibson, Godard, Hayt, Humphrey, Kline, La Bau, Lent, H. C. Murphy, T. Murphy, Pierson, Platt, Stanford, Sutherland, White, Wilbor, Williams, Wolcott—23.

Mr. Folger offered the following resolution:

Resolved, That a committee be appointed, or some standing committee of the Senate be instructed to prepare and report to the Senate rules for its guidance in the pending proceedings, and that a recess of the Senate be taken for that purpose.

Mr. Williams moved that the standing committee of the judiciary be designated as the committee to perform that duty.

The President put the question whether the Senate would agree to said motion of Mr. Williams, and it was decided in the affirmative.

The President then put the question whether the Senate would agree to said resolution, as amended, and it was decided in the affirmative.

On motion of Mr. Hayt, the Senate took a recess until 4 o'clock P. M.

FOUR O'CLOCK, P. M.

The Senate again met.

The following additional Senators were present:

Messrs. Campbell, O'Donnell and Parsons.

The President announced the appointment of the following officers:

Doorkeeper, Herman B. Young; Janitor, Nathaniel Goodwin; Pages, Bernard Schmidt, Christopher Van Valkenburgh; Stenographer, Edward F. Underhill.

The President presented a request from Hon. D. S. Bennett, Senator from the 31st district, asking to be excused from attendance at this session on account of sickness in his family.

The President put the question whether the Senate would agree to grant said request, and it was decided in the affirmative.

Mr. Folger, from the committee on the judiciary, submitted the following report:

RULE I.—The Senate shall, until otherwise ordered, meet in the Senate Chamber daily at 9 o'clock A. M., and continue in session

until 2 o'clock P. M., at which hour a recess shall be had until 4 o'clock P. M., when it shall meet again and continue in session until 7 o'clock P. M., when it shall adjourn.

But this rule may be changed from time to time by the Senate without previous notice being given; or for want of witnesses, or other reasons, the Senate may take a recess or adjourn at a different hour.

RULE II.—At its meetings at which rules are adopted, or at the next meeting thereafter, the charges against the accused and his answer thereto shall be read by the Clerk. The charges and answer to be read are those which were agreed to before the committee of judidiary, at the last session of the Legislature. The accused shall be called, and if he appears shall be assigned a place within the bar, with such counsel as he shall select to aid him in his defence. The counsel for the prosecution shall also have a place assigned to them within the bar; and the prosecution (unless otherwise ordered by the Senate), shall be represented by the counsel who have already appeared in the matter.

RULE III.—The prosecution and the accused shall be entitled to the process of the Senate to compel the attendance of witnesses, which process shall be signed by the Clerk and sealed with the seal of the Senate, and tested in the name of the Lieutenant Governor and the President of the Senate, and may be in the form following:

"THE PEOPLE OF THE STATE OF NEW YORK: By the grace of God, free and independent: To

GREETING:

You and each of you are hereby commanded and required, that, laying aside all other business, and all pretenses and excuses whatsoever, you be and appear in your own proper persons, before our Senate, at the Senate chamber at the capitol, in the city of Albany, on the day of , A. D. 1866, at o'clock, M. of that day, to be examined as witnesses, and to testify the truth and give evidence *on our behalf*, (or on behalf of the defendant hereinafter named,) concerning certain charges, then and there to be tried and determined, before our Senate of our said State, which have been made against George W. Smith, the county judge of Oneida county, and upon which our Governor of our said State has recommended to our Senate aforesaid, that the

said George W. Smith be removed from his said office of county judge of Oneida county. And hereof fail not at your peril.

Witness, the Hon. Thomas G. Alvord, the Lieutenant Governor of the State of New York, and the President of the Senate thereof, this day of A. D. 1866.

[L. S.]

Attest,

Clerk of the Senate.

And such subpœna may be served and returned in the manner usual in Courts of Record of this State.

RULE IV.—All motions made by Senators, or by the counsel for the prosecution or for the accused, shall be addressed to the President of the Senate; and if he shall require, they shall be reduced to writing and read at the desk of the Clerk; and the decision thereof, and of all points and objections raised by the counsel, shall be had after a hearing of counsel if they desire it, and by the vote of the Senate, which, when demanded by any Senator, shall be taken by ayes and nays. And the motions, points or objections shall be entered upon the records of the Senate, together with the decision thereon. The decision thereof shall be had without debate, unless a Senator shall desire debate, when, on motion to that end, if it shall be adopted by the Senate; the chamber shall be cleared of all but privileged persons, and discussion shall be had in private; and the decision arrived at shall be publicly announced by the President of the Senate.

RULE V.—Each witness shall be, as he is called, sworn or affirmed, by the Clerk, in substantially the following form:

You do solemnly swear (*or affirm*), that the evidence which you shall give upon this hearing upon certain charges preferred against George W. Smith, county judge of Oneida county, and upon which his removal from that office has been recommended by the Governor, shall be the truth, the whole truth, and nothing but the truth, so help you God (or this you affirm).

All the rules legal and usual in courts of record of this State in regard to the introduction of evidence and the examination and cross-examination of witnesses, must be observed.

RULE VI.—If a member of the Senate shall be called as a witness, he shall be sworn or affirmed, and give his testimony standing in his place.

RULE VII.—The final judgment of the Senate upon the charges preferred, shall be taken by the President of the Senate, who,

upon each one of the charges, as it shall be separately read by the Clerk, shall, with its number, propose to each Senator in the order in which his name stands upon the division list, the question, "Senator, how say you, is the first (or second or whatever) item of the charges preferred against the accused, proven?" Each Senator when so questioned, shall rise in his place and answer "proven" or "not proven," and when the division list of the Senate shall have been gone through with upon each charge, the result upon each charge shall be announced, and shall be entered upon the records of the Senate. If a majority shall agree on the finding and proven upon any one or more of the items of said charges, the President shall in the same manner put, and the Senators shall in the same manner answer the further question, "Shall George W. Smith be removed from his office of County Judge of Oneida county, for the cause stated in the item (or items) of the charges preferred against him which you have found proven." And the final judgment of the Senate shall be certified to the Governor by the President and Clerk of the Senate.

RULE VIII.—The President of the Senate shall employ a competent stenographer and assistants to take the oral testimony, and shall procure it to be printed from day to day for the use of the Senate and counsel. At the opening of the Senate on the day after any part of the printed report of the testimony shall be brought in, any member of the Senate, or either of the counsel, may move to correct the same in any particular, to be then stated in writing. Such stenographer and assistants shall first be sworn faithfully to perform their duties as such.

RULE IX.—The Clerk shall keep a book of records of the proceedings, orders and judgments of this Senate, and the ayes and nays upon every question in that way decided.

RULE X.—The President of the Senate shall direct all necessary preparations for the Senate chamber, and all forms of proceeding not provided for in these rules, and not otherwise ordered.

The President directed the Clerk to call the name of the respondent, George W. Smith, when he appeared before the Senate in person and by his counsel, Henry Smith and Ira Shafer, Esquires, of Albany.

Counsel for the prosecution, Charles B. Sedgwick Esq., of Syracuse, and Daniel Waterman, Jr., of Utica.

The Clerk having read the message of His Excellency the Governor, recommending the removal of said George W. Smith.

Counsel for respondent moved as follows:

That this proceeding be dismissed on the ground that the Senate has not acquired jurisdiction of this case, the Governor not having recommended the removal of the accused; and submits:

1. That the Senate only has jurisdiction to remove "on the recommendation of the Governor."

2. That the message declares that the Governor has presumed to refer the entire case for the consideration of the Senate without *any preliminary examination* on his part with a view of forming *correct conclusions* as to the guilt of the party charged or learning his defence.

3. That the message in no wise indicates the opinion entertained by the Governor, but makes his recommendation for removal depend entirely upon the judgment of the Senate and upon its convicting the accused of the charges.

On motion of Mr. H. C. Murphy, the Senate chamber was cleared for consultation and discussion upon the motion of the respondent.

After debate,

The President put the question whether the Senate would agree to said motion, and it was decided in the negative, as follows:

FOR THE NEGATIVE.

Andrews	Folger	Kline	Parsons	White
Campbell	Gibson	La Bau	Pierson	Wilbor
Chambers	Godard	Lent	Stanford	Williams
C. G. Cornell	Hayt	H. C. Murphy	Sutherland	Wolcott
Crowley	Humphrey	T. Murphy		23

The doors of the Senate were then opened and the vote upon the motion announced; when,

On motion of Mr. Kline, the Senate adjourned.

WEDNESDAY, JUNE 13, 1866.

The Senate met pursuant to adjournment.

The roll was called, and a quorum having appeared, the journal of yesterday was read and approved.

The following additional Senators were present:

Messrs. Barnett and E. Cornell.

Mr. White asked and obtained leave of absence from attendance in the Senate, from to-morrow until Tuesday next.

Mr. Wilber asked and obtained leave of absence, on account of sickness in his family.

Henry Smith, Esq., counsel for respondent, objected to the order of the Senate excusing any of its members from attendance upon this trial, who were present at the commencement thereof, and have since been in attendance.

Ira Shafer, Esq., counsel for respondent, submitted the following:

This respondent now here objects to the jurisdiction of this Honorable Senate to further proceed with the prosecution, upon the ground that no recommendation whatever has been made by the Governor for the removal of this respondent; and alleges and avers that no such paper writing as that purporting to be a message from the Governor to the Senate, and printed and set forth in Senate Document No. 48, has ever been communicated to the Senate by the Governor, but the said paper writing, purporting to be a message as aforesaid, is not a genuine message from the Governor; and this the said respondent now here offers to prove.

And the said respondent now here avers and offers to prove that the message which was in truth and fact communicated or transmitted by the Governor to the Senate, relating to the charges against him, was, on the day it was communicated to the Senate, wrongfully and unlawfully abstracted from its files, and destroyed or altered, and the said pretended message, upon which the jurisdiction of the Senate is now claimed, was wrongfully and unlawfully substituted in the place thereof; and which said substituted paper writing, in so far as it recommends the removal of this respondent, and in other respects, materially differs from that communicated by the Governor to the Senate aforesaid.

And this respondent further avers and alleges, that of the matters hereinbefore alleged, he was wholly and totally ignorant until informed thereof, on the 7th day of June, 1866, and this he is ready to verify.

C. B. Sedgwick, Esq., counsel for prosecution, in answer to the motion submitted by the counsel for the accused, submitted (without admitting or denying the allegations therein contained) that it is not competent for the respondent, in the method proposed, to question or impeach the journal of the Senate.

On motion of Mr. Gibson, the Senate chamber was cleared for consultation and discussion.

After debate,

The President put the question whether the Senate would agree to the motion of respondent, that he be allowed to prove the facts alleged, and it was decided in the affirmative.

The doors were then opened, and the result announced.

The following witnesses were sworn on the part of the respondent: George S. Hastings, James Terwilliger, Hon. Thomas G. Alvord and George W. Demers.

On motion of Mr. Kline, the Senate took a recess until 4 o'clock P, M.

FOUR O'CLOCK P. M.

The Senate again met.

Senator Sessions appeared and took his seat.

The following witnesses were called by the counsel for the prosecution : Hon. Thos. G. Alvord, re-called ; His Excellency Gov. Fenton; James Terwilliger, re-called.

Counsel for respondent submitted the following :

Insisting that the facts upon which the motion to dismiss was presented have been fully proved, the respondent now renews and insists upon the motion to dismiss these proceedings upon the grounds stated when the motion was originally presented.

After argument by counsel for respondent,

Hon. J. H. Martindale, Attorney General of the State, then arose to address the Senate on part of the prosecution.

Counsel for respondent objected; that under rule 2, the prosecution could not be represented by counsel other than those who have heretofore appeared in the matter, except by order of the Senate.

The President expressed the opinion that the Attorney General, as the law officer of the State, had a right to appear on part of the prosecution.

Objection being raised,

Mr. H. C. Murphy moved that the Attorney General be allowed to appear on the part of the prosecution.

The President put the question whether the Senate would agree to said motion, and it was decided in the affirmative.

Pending the argument of counsel, the hour of adjournment having arrived,

Mr. C. G. Cornell moved that the session be continued until the counsel had closed his argument.

The President put the question whether the Senate would agree to said motion, and it was decided in the affirmative.

After conclusion of argument by the counsel,

On motion of Mr. Folger, the Senate adjourned.

THURSDAY, JUNE 14, 1866.

The Senate met pursuant to adjournment.

The roll was called, and a quorum having appeared, the journal of yesterday was read and approved.

After further argument by the counsel,

Mr. Williams moved that the Senate be cleared for consultation and discussion.

The President put the question whether the Senate would agree to said motion, and it was decided in the affirmative.

After debate,

Mr. Williams offered the following resolution:

Resolved, That the several acts by which the message of the Governor, received by the Senate 14th Feb., 1866, was changed in its mere phraseology, and transmitted to the Senate, though not according to the custom of the Executive and the Senate, were not fraudulent, and that the message now before us is the official act of the Executive, and is legitimately in the possession of the Senate as one of its official documents.

Mr. O'Donnell moved to lay the resolution upon the table.

The president put the question whether the Senate would agree to said motion, and it was decided in the affirmative.

Mr. Folger offered the following resolutions:

Resolved, That by virtue of the message of the Governor read at the desk of the Clerk on the 14th day of February last, this Senate has jurisdiction of the subject matter, and has rights, at a proper time, to hear and determine the question of the removal of the respondent from his office.

Resolved, That if the respondent is now ready to go on with the hearing, that the same be at once proceeded with; that if the respondent is not now ready to proceed, that the Senate, when it next adjourns, adjourn *sine die*.

Mr. H. C. Murphy offered the following as a substitute for the first resolution:

Resolved, That the proceedings in this case be dismissed.

Mr. O'Donnell moved to amend the substitute by striking out all after the word "Resolved," and inserting the following:

"That the case of George W. Smith, county judge of Oneida county, be dismissed, for the reason that no proper recommendation for his removal is before the Senate from His Excellency the Governor."

Pending the question,

On motion of Mr. Folger, the Senate adjourned until 4 o'clock P. M.

FOUR O'CLOCK, P. M.

The Senate again met.

The President announced the question to be upon the amendment of Mr. O'Donnell to the substitute offered by Mr. H. C. Murphy.

Mr. O'Donnell withdrew his amendment.

Mr. Pierson moved to amend the substitute by striking out all after the word "Resolved," and inserting the following:

"That for want of jurisdiction, and for no other cause, that all further proceedings be and they are hereby discontinued and dismissed."

Mr. H. C. Murphy accepted the amendment.

Mr. H. C. Murphy moved to amend the substitute by striking out the words, "and for no other cause."

The President put the question whether the Senate would agree to said motion to amend, and it was decided in the negative, as follows:

FOR THE AFFIRMATIVE.

H C. Murphy	Stanford	Sutherland	3

FOR THE NEGATIVE.

Barnett	Folger	Humphrey	T. Murphy	Sessions	
Campbell	Gibson	Kline	Parsons	Williams	
Collins	Godard	La Bau	Pierson	Wolcott	
Crowley	Hayt	Lent	Platt		19

The President put the question whether the Senate would agree to the substitute offered by Mr. H. C. Murphy, and it was decided in the negative, as follows:

FOR THE AFFIRMATIVE.

Barnett	Humphrey	T. Murphy	Pierson	Sutherland	
Chambers	Lent	O'Donnell	Stanford	Wolcott	
C. G. Cornell	H. C. Murphy				12

FOR THE NEGATIVE.

Campbell	Folger	Hayt	Parsons	Sessions	
Collins	Gibson	Kline	Platt	Williams	
Crowley	Godard	La Bau			13

The President then put the question whether the Senate would agree to the resolution offered by Mr. Folger, in the words following: "*Resolved*, That by virtue of the message of the Governor, read at the desk of the Clerk on the 14th day of February last,

this Senate has jurisdiction of the subject matter, and has right, at a proper time, to hear and determine the question of the removal of the respondent from his office," and it was decided in the affirmative, as follows:

FOR THE AFFIRMATIVE.

Campbell	Folger	Hayt	Parsons	Sessions	
Collins	Gibson	Kline	Platt	Williams	
Crowley	Godard	La Bau			13

FOR THE NEGATIVE.

Barnett	Humphrey	T. Murphy	Pierson	Sutherland	
Chambers	Lent	O'Donnell	Stanford	Wolcott	
C. G. Cornell	H. C. Murphy				12

The question being upon the resolution offered by Mr. Folger, in the words following:

Resolved, That if the respondent is now ready to go on with the hearing, that the same be at once proceeded with; that if the respondent is not now ready to proceed, that the Senate, when it next adjourns, adjourn *sine die*.

Mr. Williams moved to lay the same upon the table.

The President put the question whether the Senate would agree to said motion to lay on the table, and it was decided in the affirmative.

The doors were then opened, and the result announced.

Mr. Folger moved that the chamber be again cleared for consultation.

The President put the question whether the Senate would agree to said motion, and it was decided in the affirmative.

After debate,

On motion of Mr. Pierson, the Senate adjourned.

FRIDAY, JUNE 15, 1866.

The Senate met pursuant to adjournment.

A quorum having appeared, the journal of yesterday was read and approved.

Mr. Gibson moved that the Senate be cleared for consultation.

The President put the question whether the Senate would agree to said motion, and it was decided in the affirmative.

Mr. Gibson offered the following resolution:

Resolved, That the document entered upon the journal of the Senate on the 14th February, 1866, as a message from His Excel-

lency the Governor, in relation to the removal of Geo. W. Smith, county judge of Oneida county, be amended by inserting the word "as" which was stricken out thereof, by restoring the phrase, "I must assume that the charges presented to me, and duly verified, are true," expunging the words written on erasure, as follows: "he shall, upon a full and fair investigation, be convicted of the charges made against him," and inserting in the place thereof the words as follows: "upon trial he shall fail to disprove the charges which are made against him."

The President put the question whether the Senate would agree to the adoption of said resolution, and it was decided in the affirmative, as follows:

FOR THE AFFIRMATIVE.

Campbell	Godard	Kline	Parsons	Sessions	
Crowley	Hayt	La Bau	Platt	Williams	
Gibson					11

FOR THE NEGATIVE.

Barnett	Humphrey	T. Murphy	O'Donnell	Wolcott	
Chambers	H. C. Murphy				7

Mr. Gibson offered the following resolution:

Resolved, That the motion of the respondent to dismiss the charges and discontinue the case, be and the same is hereby denied.

The President put the question whether the Senate would agree to the adoption of said resolution, and it was decided in the affirmative, as follows:

FOR THE AFFIRMATIVE.

Campbell	Godard	Kline	Parsons	Sessions	
Crowley	Hayt	La Bau	Platt	Williams	
Gibson					11

FOR THE NEGATIVE.

Barnett	Humphrey	H. C. Murphy	O'Donnell	Wolcott	
Chambers	Lent	T. Murphy			8

The doors were then opened and the result announced.

The counsel for the respondent submitted the following:

1. Respondent objects especially to the jurisdiction of the Senate to continue these proceedings against him, for the reason it has no jurisdiction of his person, inasmuch as no copy of the complaint against him has ever been served; that instead of the message now read, the message as it appears upon the printed journal was served upon him as a part of the complaint.

2. That in accordance with the constitutional provision that he shall have an opportunity to be heard in his defence, a copy of the Executive and Senatorial proceedings must be served upon

him, and he must be afforded a reasonable time to make his defence thereto.

3. That the Senate has not acquired the right to proceed in this case upon its subject matter as claimed by the Senate, because the defendant has not been served with a copy of the complaint as it is stated from the Clerk's desk.

4. That this respondent respectfully submits that by reason of the action of the Senate in reference to the message, he is taken by surprise, and is unprepared to proceed, and asks a reasonable time to prepare for his defence.

Mr. Williams moved that the chamber be cleared for consultation.

The President put the question whether the Senate would agree to said motion, and it was decided in the affirmative.

Mr. Gibson offered the following resolution:

Resolved, That the objections now made by the respondent be, and the same are, hereby overruled; and that the question of an adjournment to the respondent be and the same is hereby reserved.

After debate,

The President put the question whether the Senate would agree to the adoption of said resolution, and it was decided in the affirmative, as follows:

FOR THE AFFIRMATIVE.

Campbell	Crowley	Hayt	Parsons	Sessions	
Collins	Gibson	Kline	Platt	Williams	
E. Cornell	Godard	La Bau			13

FOR THE NEGATIVE.

Barnett	Humphrey	H. C. Murphy	O'Donnell	Wolcott	
Chambers	Lent	T. Murphy	Stanford		9

Mr. Gibson offered the following resolution:

Resolved, That when the Senate adjourns this day, it adjourn to the day of next.

Mr. Sessions moved to fill the blank by inserting "Tuesday, 19th inst., at 9 o'clock."

Mr. Parsons moved that the resolution be laid upon the table.

The President put the question whether the Senate would agree to said motion to lay upon the table, and it was decided in the affirmative.

The doors were then opened and the result announced.

Counsel for respondent submitted the following:

Respondent moves an adjournment, saving to himself now and at all times hereafter, all benefits of exception in fact and in law to the alleged message read this morning, and to the jurisdiction

of the Senate to proceed thereon, and assigns as reasons for this motion, as he verily believes, and as he is advised by his counsel, he cannot now safely proceed with the trial of these proceedings; that the reasons, amongst others, why he is not prepared are, that as the questions now involved, he is advised and believes, he requires other and different preparation for trial than he has now made, as well upon the law as the facts, and this he is ready to verify.

Mr. Humphrey moved that the chamber be cleared for consultation.

The President put the question whether the Senate would agree to said motion, and it was decided in the affirmative.

Mr. Lent moved that when the Senate adjourns to-day, it adjourn to meet on the 28th day of August next, at 11 o'clock A. M.

Mr. Williams moved to amend by striking out the words "28th day of August," and inserting in lieu thereof the words "the 10th day of July."

The President put the question whether the Senate would agree to said motion to amend, and it was decided in the negative.

The President then put the question whether the Senate would agree to said motion of Mr. Lent, and it was decided in the affirmative.

Mr. Gibson moved that the reading of the charges and specifications against respondent be suspended until the next meeting of the Senate.

The President put the question whether the Senate would agree to said motion, and it was decided in the affirmative.

On motion of Mr. Humphrey, the Senate adjourned until the 28th day of August next, at 11 o'clock A. M.

TUESDAY, AUGUST 28, 1866.

The Senate re-assembled at 11 o'clock, pursuant to adjournment on the 15th day of June.

The President directed the Clerk to call the roll, and the following Senators were found to be present:

Messrs. Andrews, C. G. Cornell, Folger, Gibson, Humphrey, La Bau, Lent, H. C. Murphy, Sessions, Stanford, Sutherland, Wilber and Williams.

No quorum being present,

On motion of Mr. H. C. Murphy, the Senate took a recess until 12 o'clock.

TWELVE O'CLOCK M.

The Senate again met.

The Clerk again called the roll, when the following Senators were found to be present:

Messrs. Andrews, Bennett, Collins, C. G. Cornell, Folger, Gibson, Godard, Humphrey, Kline, La Bau, Lent, Low, H. C. Murphy, T. Murphy, Parsons, Sessions, Stanford, Sutherland, Wilbor and Williams—20.

Mr. H. C. Murphy offered the following preamble and resolutions:

Whereas, the President of the United States is about to visit this State, on his way to a sister State, to assist in laying the foundation of a mouument to the memory of the late lamented patriot and statesman, Stephen A. Douglas; therefore,

Resolved, That the Senate do, on behalf of the people of the State of New York, welcome His Excellency Andrew Johnson, to our territory.

Resolved, That a committee of three members of the Senate be appointed to tender to the President this welcome.

The President put the question whether the Senate would agree to the adoption of said resolutions, and it was decided in the affirmative.

Messrs. H. C. Murphy, Sutherland and Stanford were appointed as such committee.

Mr. Smith, counsel for respondent, moved that the Senate take a recess until 3 o'clock P. M.

The President put the question whether the Senate would agree to said motion, and it was decided in the negative.

Mr. H. C. Murphy moved that the counsel for respondent have leave to state any objections to the jurisdiction of the Senate, not heretofore made.

The President put the question whether the Senate would agree to said motion, and it was decided in the affirmative.

Mr. Shafer, counsel for respondent, submitted the following:

The respondent objects to the jurisdiction of the Senate to proceed in the trial of this cause under the message, as it has declared

it to have been read from the Clerk's desk, on the 14th of February, on the grounds—

1. That it recommends his removal from office unless he proves his innocence; thereby assuming the guilt of the respondent.

2. The same is a nullity, and is void.

3. That no such message was ever transmitted to the Senate; nor is there any such much message in existence.

Mr. Gibson moved that the objection be not sustained.

The President put the question whether the Senate would agree to said motion, and it was decided in the affirmative.

FOR THE AFFIRMATIVE.

Andrews	Folger	Humphrey	Lent	Sessions	
Bennett	Gibson	Kline	Parsons	Wilbor	
Collins	Godard	La Bau			13

FOR THE NEGATIVE.

C. G. Cornell	H. C. Murphy	T. Murphy	Stanford	Sutherland	5

The Clerk then proceeded to read the charges against the respondent; as follows:

1. That the said George W. Smith, being such judge as aforesaid, and being authorized by the laws of the State of New York to decide upon the claims of citizens of said county to exemption from service in the militia of said State, did, in numerous instances, draw up as attorney or counsel for the applicants for such exemption the necessary papers to secure such exemption, and did receive pay therefor, as such attorney and counsel, knowing that the several cases so prepared were to come before him for examination or decision thereon, and afterwards passing upon and deciding the same in his judicial capacity. This was done at different times and dates during the years 1862, 1863 and 1864, at the city of Utica, in said county of Oneida, the precise dates and names being unknown.

2. That the said George W. Smith, being such judge as aforesaid, and having one Henry T. Utley as a law partner, he, the said Smith, being authorized by the laws of the State of New York to decide upon the claims of citizens of the said county of Oneida to exemption from service in the militia of said State, did suffer and permit the said Utley, as attorney and counsel for applicants for such exemption, to prepare the papers therefor, and to receive pay therefor, as such attorney and counsel, he being entitled to and receiving, as a partner of the said Utley, a share of such fees and charges, and knowing that the several cases so prepared by the said Utley were to come before him for examination and

decision thereon, and afterwards passing upon and deciding the same in his official capacity. This done at Utica aforesaid, at different dates during the years 1862, 1863, 1864 and 1865, the precise dates and names being unknown.

3. That the said George W. Smith, being such county judge as aforesaid, and as such, under the laws of this State, having the controlling voice in the appointment of excise commissioners in the said county of Oneida, did, with a view to his own personal advantage and gain, procure the appointment of Aaron W. Reynolds, George F. Weaver and Samuel P. Lewis as such commissioners; and did afterwards, to wit, in or about the month of February, A. D. 1865, with the same intent, procure from the commissioners so appointed his own appointment, in writing, as the prosecuting attorney of the said board of commissioners, the same being a valuable office and appointment; that one Samuel J. Barrows, at and before such appointment of said Smith, held the said office under the appointment of the said board, and had discharged the duties thereof in a satisfactory manner; that the appointment of the said Smith was not published, but was kept secret; that afterwards and on or about the 22d day of March, A. D. 1865, the said Smith sold the said office and appointment to the said Barrows for the sum of $500, which was paid by the said Barrows and received by the said Smith therefor, and such appointment in writing given up to said Barrows and destroyed; that at the time of the payment of said money as aforesaid, and as a part of the same transaction, it was corruptly proposed and agreed by the said Smith that he would continue in office and re-appoint one of the said commissioners, viz: the said Weaver, for the purpose of securing the said office to the said Barrows; that it was understood by and between the said parties, that by the sale and giving up of said office and appointment by the said Smith, the said Barrows would continue in said office and employment, and could secure his own re-appointment thereto, which has been done, and said Barrows did continue in said office, and has hitherto and still does so continue, and has been re-appointed thereto. And it was further understood that said Smith was not thereafter to interfere with said Barrows in said office, but was to aid in continuing him therein, and securing the same to him.

4. That the said George W. Smith, being such county judge, as aforesaid, and as such, under the laws of this State, having the controlling voice in the appointment of excise commissioners in the

said county of Oneida, did, with a view to his own personal advantage and gain, procure the appointment of Aaron W. Reynolds, George T. Weaver and Samuel P. Lewis as such commissioners; and did afterwards, to wit, in or about the month of February, A. D. 1865, with the same intent procure from the commissioners, so appointed, his own appointment, in writing, as the prosecuting attorney of the said board of commissioners, the same being a valuable office and appointment. That the said Smith, just prior to his said appointment, and with a view to his own gain and advantage, did propose to one James G. French, an attorney and counsellor-at-law, residing at Utica, in said county, and to one William B. Taylor, as a friend of said French, that he would procure the said appointment for him, the said French, or would give him his influence as county judge in that behalf, provided and on condition that the said French would go into partnership with the said Smith in that business, or the business pertaining to that office and appointment, and would accept for his services one-third of the emoluments or profits of the same, and give to the said county judge two-thirds of such profits and emoluments, which proposition was rejected by said French. And further, that after the said county judge had received the said office or appointment for himself, he made substantially the same proposition to the said Samuel J. Barrows, before the sale of said office to him, as in the last preceding charge specified and set forth.

5. That at and before the time of the transaction, hereinafter stated and charged, one Henry T. Utley was the law partner of the said George W. Smith. That, on or about the fifth day of January, A. D. 1865, one Charles E. Norton was confined in the county jail of Oneida county upon a charge of grand larceny. That the said Smith, being the friend of one Major John A. Haddock, then the Acting Assistant Provost Marshal General of the Western District of New York, and, having authority in the premises, applied to and used his influence with the said Haddock to procure, and did procure from him a special order that the said Norton should be mustered into the military service of the United States, and that the bounty to which said Norton would become entitled, on such muster in said county of Oneida, being the sum of six hundred dollars or over, should be paid to and retained by the said Utley, the law partner of said Smith. That, upon procuring said order, and upon the application of the said Utley, the said county judge let the said Norton to bail—the said Utley be-

coming his surety—and thereupon said Norton was mustered into the service of the United States, and his bounty, amounting to six hundred dollars, was paid to the said Utley. That it was understood and agreed between the parties to this transaction, that such bail bond was not to be enforced against said Utley; and that, in pursuance of such understanding, the said county judge retained the same in his own possession and control, and did not file the same in the clerk's office of said county, nor deliver the same to the district attorney of said county, as by law he was required.

6. That some time prior to the month of January, A. D. 1865, one John A. Haddock had been appointed to, and then held the office of Acting Assistant Provost Marshal General of the Western Division of the State of New York, with the rank of Major, and having his headquarters ertablished at Elmira. That the said Haddock had long been the friend of and intimate with the said George W. Smith, and advised him of his expected appointment, and after it was obtained had a long interview with him at Utica in reference thereto. That at the same time one Aaron Richardson was a notorious substitute and bounty broker. That one John D. Collins, residing at Utica, and having a desk in the office of the said county judge then and for a long time previous thereto, was employed by the said Richardson as his clerk, and to assist him in his aforesaid business. That with a view to the mutual and personal pecuniary, but corrupt and unlawful gain and advantage of the said Haddock, Richardson, and Smith, and for the purpose of securing peculiar and special facilities and unfair and unlawful advantages to the said Richardson in his said business in Oneida county and elsewhere in the said Western Division, a corrupt and unlawful arrangement and combination was entered into by and between the said George W. Smith and the said Richardson and the said Haddock, acting upon the solicitation and under the personal and official influence of said Smith, by which such peculiar and special facilities and improper and unlawful advantages were secured to said Richardson in his said business of recruiting and bounty brokerage. That among other things the said Smith did, on or about the 8th or 9th day of January, A. D. 1865, at the request and on the behalf of the said Richardson, go to Elmira aforesaid, and did procure from the said Haddock two several letters to Lieutenant Colonel D. W. C. Poole, then Acting Provost Marshal at Utica, in the words and figures following, viz:

HEADQUARTERS A. A. PROV. MARSHAL GEN. & SUPT. OF
VOL. RECRUITING SERVICE WEST. DIV. S. OF N. Y.,
ELMIRA, N. Y., *January* 9, 1865.

Lt. Col. D. W. C. POOLE, *Acting Prov. Marshal, Utica, N. Y.:*

Colonel—I have the honor to inform you that I have acquaintance with Mr. J. D. Collins, of Utica, and know him to be a fine clerk. You, unless good reasons are apparent to the contrary, treat enlistment papers made out under his direction and in his office, during the hurry of recruiting, as though made out by one of your enlisting clerks—taking care, however, to see that such papers are made out in conformity to law and regulations.

Very respectfully, your ob't servant,

JNO. A. HADDOCK,
Maj. and A. A. P. M. G.

HEADQUARTERS A. A. PROV. MARSHAL GEN. & SUP. OF
VOL. RECRUITING SERVICE WEST. DIV. S. OF N. Y.
ELMIRA, N. Y., *January* 10, 1865.

Lt. Col. POOLE, *Acting Provost Marshal, Utica, N. Y.:*

Colonel—The true construction of Order No. 23, Department of the East, dated March 25th, 1864, and promulgated from this office, with an intimation that the spirit of that order would govern me in passing upon cases arising in this Division, will be held by me to be that if recruits or substitutes are fully informed, by the Provost Marshal, of their rights as to local and government bounties, they may therefore assign to any person such portion of their local bounty as they may elect, not exceeding five-eighths thereof. The Provost Marshal should take pains to inquire fully into bargains made with recruits and substitutes, and hold both parties to a strict performance of their agreements, not forgetting that recruiting agents have rights that should be respected as well as recruits or substitutes.

I am Colonel, very respectfully,
Your obedient servant,
(Signed) JNO. A. HADDOCK,
Major and A. A. P. M. G. W. Div. of N. Y.

That in further pursuance of such scheme and arrangement said Richardson went himself to Elmira, starting on the same day with Smith, and passed him on the way, reaching Elmira in advance of Smith, and advising said Haddock that he was coming, and the purpose of his visit. That Haddock on that occasion gave to Richardson several letters to various provost marshals in his divi-

sion, commending him to their confidence. That afterwards, and in pursuance of such corrupt scheme and arrangement, the said Richardson, at Canandaigua, on or about the 21st day of January, A. D. 1865, presented to said Haddock a valuable horse, cutter, harness and robes, of the value of $500 and upwards. That afterwards, and on or about the 25th day of the same month, he presented to said Haddock $2,000 in cash. That in further performance of said corrupt scheme, the said Haddock sent to the said Richardson at Utica advice by telegraph, as follows: On January 24th: "She will be there to-morrow; watch for her." On the same day: "It stands at 2,088." On January 25th: "She was sent to you yesterday. Has she come? Do you want another one for the others? I wrote you last night." That these telegrams were intended to advise said Richardson of the quota of the 21st congressional district, being said county of Oneida. That afterwards, and on the 30th day of January, A. D. 1865, the said Haddock gave to said Richardson a paper showing the surplus of the several sub-districts of said district, as shown by the report of quotas and credits, to the 31st day of December, 1864. That at the same time the said Haddock gave to said Richardson a letter of that date to Captain Crandall, who had succeeded said Colonel Poole as provost marshal of said district. That said paper and said letter are in the words and figures following, viz:

Surplus of sub-districts in the 21st congressional district, as shown by report of quotas and credits, dated December 31st 1864:

Annsville	9
Augusta	1
Ava	3
Boonville	24
Bridgewater	9
Camden	2
Deerfield	4
Florence	2
Floyd	1
Kirkland	3
Lee	3
Marshall	5
New Hartford	2
Paris	2
Remsen	4
Rome	12
Steuben	1
Trenton	8

Utica, 1st ward	4
Utica, 3d ward	18
Utica, 4th ward	5
Utica, 5th ward	7
Utica, 6th ward	24
Utica, 7th ward	8
Vernon	1
Western	3
Westmoreland	1
Whitestown	20
	193
Oneida county at large	17
	210
Deficiency	4
	206

ELMIRA, N. Y., *January* 30, 1865.

Captain CRANDALL, *Provost Marshal, Utica, N. Y.:*

Captain—From my acquaintance with Mr. Aaron Richardson, of Albany, I am well convinced that he is a man of integrity, and that he will do as he agrees. Such men are very valuable in putting in men, as his acquaintance is very extensive and his resources many. I hope you will grant him all reasonable indulgence. He is a man of property, and can back up his statements.

Very respectfully, your obedient servant,

(Signed) JNO. A. HADDOCK,

Major and A. A. P. M. G.

That, at some time after the appointment of said Crandall as Provost Marshal at Utica, the said Richardson had deposited with him a large amount—to wit, twenty thousand dollars of the bonds of Oneida county—as security either that the men enlisted by him would not desert, or that they should be credited to the said county or district; that these facts and others connected with the transactions between the said Haddock and the said Richardson, were communicated to and well known to the said Smith, who was, during this time, in correspondence with said Haddock, and in frequent personal communication with the said Richardson after his return from Elmira, and during the months of January and February, 1865; that afterwards, and on or about the 3d day of March, A. D. 1865, the said Smith again went to Elmira and saw Haddock, and became fully acquainted with all his transactions with the said

Richardson, as hereinbefore set forth; that on that occasion he tried to procure from the said Haddock an order for the surrender of the said $20,000 of bonds so deposited as aforesaid by the said Richardson with said Haddock, and also bonds of other parties deposited in like manner and for the same purpose; that said Haddock on that occasion gave to his clerk, one S. Floyd Hoard, an order upon said Crandall for the delivery to him of the said bonds, and the said Hoard and said Smith on the evening of that day went from Elmira to Rochester, where the said Richardson had proposed to meet said Haddock at that time; that the said Smith and the said Hoard met Richardson the next morning, and that said Smith then endeavored to procure from the said Richardson the telegrams, letters and papers hereinbefore stated, and others tending to show the corrupt arrangement between said Haddock and said Richardson in relation to recruiting, and among other corrupt inducements thereto, assured him that said $20,000 of bonds for which said Hoard had an order, would, if surrendered by said Crandall, be given up by said Haddock to Richardson; that immediately after his return to Utica, the said Smith, on the fifth or sixth day of March, at the request of said Richardson, returned to Elmira; that on this occasion said Smith took a written memorandum prepared by said Collins, the clerk of said Richardson, containing several requests, to be presented to said Haddock on behalf of said Richardson, to wit (substantially):

1. To grant furloughs to three men put in by Richardson (and who were deserters).
2. To send a guard to Utica.
3. To allow said Crandall to muster men for other districts.
4. To direct Crandall to give up the said $20,000 bonds to Richardson.
5. To have certain credits allowed to Richardson.

That before going to Elmira on this occasion, the said Smith received such memorandum in writing, and took it with him; that he there arranged at Elmira for a personal interview between the said Haddock and Richardson at some future day, which was afterwards arranged by telegraph by and between said Smith and Richardson, and took place at the Osborn House, in Rochester, on the tenth day of March thereafter; that the said Smith was there and occupied the same room with said Haddock; that on this occasion it was arranged between the said Haddock and Richardson that (among other things) said Richardson, in consideration of

favors from said Haddock, was to send him by said Smith the sum of $5,000.

That said Smith and Richardson returned to Utica, and soon thereafter, to wit: on the 13th day of March, the said Richardson, by the consent and with the knowledge of said Smith, caused a telegram to be sent from Rome to said Haddock, requesting him to order Major Beadle, then provost marshal at Utica, to muster men for Oswego, to which the following answer was returned. viz:

ELMIRA, *March* 10, 1865.

GEORGE W. SMITH, *County Judge:*

I have given directions as requested by you.

JNO. A. HADDOCK.

That afterwards, and on or about the 16th day of March, 1865, the said Richardson gave to said Smith, in his office, the sum of $5,000, in seven-thirty notes, to take to Haddock pursuant to the aforesaid arrangement at Rochester. That said Smith saw Haddock on the 19th day of March, and exhibited the said bonds to him, that he had at the same time the aforesaid memorandum given him by said Collins, at Utica. Afterwards another meeting was arranged by telegraph, and was held at Canandaigua, between said Smith and Haddock, on said Richardson's business. Haddock had declined to receive the $5,000, and Smith had returned the money to Richardson.

The said Haddock had, besides the said telegrams and papers hereinbefore particularly referred to and set forth, sent to said Richardson various other letters and telegrams, tending to implicate him and furnish evidence of his misconduct in his said office, and to subject him to military censure and punishment. That the said Haddock desired to recover and suppress such papers and evidence. That he procured the said Smith to endeavor to recover the said papers from said Richardson. That said Smith at the time when he was pretending to act as the friend and counsel of said Richardson, was likewise acting for said Haddock, and on his retainer and employment in endeaviring to procure from said Richardson such papers with a view to suppress such evidence.

That for the services in behalf of said Richardson hereinbefore set forth, and in pursuance of the aforesaid scheme and arrangement, the said Smith demanded of the said Richardson the sum of two thousand dollars.

7. That the said George W. Smith did, while holding said office at Utica, in the said county, on or about the 16th day of

March, 1865, receive from one Aaron Richardson, a person then engaged in the business of bounty broker, the sum of five thousand dollars, in seven-thirty government notes, upon the understanding and for the purpose of offering the same to the said John A. Haddock, then Acting Assistant Provost Marshal General of the Western Division of New York, as a bribe for favors granted or to be granted to said Richardson, and did knowingly and corruptly bear and offer the said bribe to the said Haddock for the purpose aforesaid.

8. That the said George W. Smith, being such county judge as aforesaid, did heretofore, to wit, on the 10th day of March, 1865, and at other times, at Utica aforesaid, and also at Rochester, endeavor to procure from the said Aaron Richardson certain letters and telegrams, addressed and sent to him, and certain other paper writings delivered to him by the said John A. Haddock, which papers tended to prove that the said Haddock had been guilty of misconduct and maladministration in his office of Acting Assistant Provost Marshal General of the Western Division of New York, with a view to suppress the evidence contained in said papers, and to screen said Haddock from just censure and punishment, he, the said Smith, well knowing the character and general contents of said papers, and the purposes for which their return was sought.

9. That the said George W. Smith, being county judge as aforesaid, habitually neglected the duties of said office, and was unreasonably absent from his office, without any sufficient reason or excuse, and that he was engaged, either for himself or others, in the business of furnishing recruits and substitutes, and bounty brokerage, a business inconsistent with the proper discharge of the duties of his place, and to the great loss and detriment of persons having business before him as county judge, or in the county court of said county; that such neglect has extended through the whole of his term as county judge.

All which it is humbly submitted is in derogation of the duties of the said Smith, as county judge as aforesaid, and tends to bring the said office into public contempt and disgrace, and is improper and unlawful and of manifest public injury, and authorizes and requires the removal of the said Smith from his aforesaid office, pursuant to the aforesaid provisions of the Constitution of this State.

Mr. Smith, counsel for respondent, submitted the following:

The respondent proposes, in compliance with what has been adjudged by the Senate to be the message of the Governor, to proceed to disprove the charges which are made against him.

The President put the question whether the Senate would agree to said motion, and it was decided in the negative.

On motion, the Senate took a recess until 4 o'clock P. M.

FOUR O'CLOCK, P. M.

The Senate again met.

No quorum being present,

Mr. Kline moved that the Senate adjourn until to-morrow morning at 10 o'clock.

The President put the question whether the Senate would agree to said motion, and it was decided in the negative.

Mr. Folger moved that the Senate take a recess until 5 o'clock, P. M.

The President put the question whether the Senate would agree to said motion, and it was decided in the negative.

Mr. Kline moved that the Senate adjourn until to-morrow morning at 10 o'clock.

The President put the question whether the Senate would agree to said motion, and it was decided in the negative, as follows:

FOR THE AFFIRMATIVE.

Collins	Kline	2

FOR THE NEGATIVE.

Bennett	Gibson	La Bau	H. C. Murphy	Sessions	
Campbell	Godard	Lent	Parsons	Wilbor	
C. G. Cornell	Humphrey				12

Mr. Collins moved that the Senate adjourn until to-morrow morning at 10 o'clock.

The President put the question whether the Senate would agree to said motion, and it was decided in the affirmative, as follows:

FOR THE AFFIRMATIVE.

Bennett	Folger	La Bau	Parsons	Stanford	
Collins	Gibson	H. C. Murphy	Sessions	Wilbor	
C. G. Cornell					11

FOR THE NEGATIVE.

Campbell	Humphrey	Lent	3

Whereupon, the Senate adjourned.

WEDNESDAY, AUGUST 29, 1866.

The Senate met pursuant to adjournment.

The journal of yesterday was read and approved.

Mr. Low moved to reconsider the vote upon the resolution of welcome to the President, passed yesterday.

The President put the question whether the Senate would agree to said motion, and it was decided in the affirmative.

Mr. Low offered the following as a substitute therefor:

Whereas, the President of the United States, and our distinguished fellow-citizens, General Grant and Admiral Farragut, are about to visit this State, on their way to a sister State, to assist in laying the foundation of a monument to the memory of the late lamented statesman, Stephen A. Douglas; therefore,

Resolved, That the Senate, on behalf of the people of the State of New York, welcome the President of the United States, and General Grant and Admiral Farragut, to our territory.

Resolved, That a committee of three members of the Senate be appointed to tender to the President, and General Grant and Admiral Farragut, this welcome.

Mr. Thos. Murphy moved to amend by including the name of Hon. W. H. Seward, Secretary of State.

Mr. Williams moved to lay the whole subject upon the table.

The President put the question whether the Senate would agree to lay upon the table, and it was decided in the negative, as follows:

FOR THE AFFIRMATIVE.

Humphrey	Sessions	Williams			8

FOR THE NEGATIVE.

Campbell	Gibson	La Bau	T. Murphy	Wilbor	
C. G. Cornell	Godard	Lent	Stanford	Williams	
Folger	Kline	H. C. Murphy	White		14

The President put the question whether the Senate would agree to said motion of Mr. T. Murphy, and it was decided in the negative, as follows:

FOR THE AFFIRMATIVE.

Collins	Folger	Lent	T. Murphy	Stanford	
C G. Cornell	Humphrey	H. C. Murphy			8

FOR THE NEGATIVE.

Bennett	Godard	Low	White	Williams
Campbell	Kline	Sessions	Wilbor	Wolcott
Gibson	La Bau			12

Mr. Folger offered the following as a substitute for the first resolution offered by Mr. Low:

Resolved, That the Senate do, on behalf of the people of the State of New York, welcome His Excellency the President of the United States, and the other distinguished official personages accompanying him, to our territory.

The President put the question whether the Senate would agree to said motion of Mr. Folger, and it was decided in the affirmative, as follows:

FOR THE AFFIRMATIVE.

Bennett	Folger	Kline	T. Murphy	White
Campbell	Godard	Lent	Sessions	Wilbor
Collins	Humphrey	H. C. Murphy	Stanford	Wolcott
C. G. Cornell				16

FOR THE NEGATIVE.

Gibson	La Bau	Low	Williams	4

The President then put the question whether the Senate would agree to said preamble and resolutions, as amended, and it was decided in the affirmative.

Mr. Low offered the following resolution:

Resolved, That our distinguished fellow-citizens, General Grant and Admiral Farragut, who are expected at the State Capital tomorrow, be warmly welcomed to the soil of this State by this Senate, on behalf of a grateful people, who recognize their services and appreciate their worth.

Mr. T. Murphy moved to amend by including the name of Wm. H. Seward, Secretary of State.

The President put the question whether the Senate would agree to said motion to amend, and it was decided in the negative, as follows:

FOR THE AFFIRMATIVE.

Collins	Humphrey	H. C. Murphy	T. Murphy	Stanford
C. G. Cornell	Lent			7

FOR THE NEGATIVE.

Bennett	Gibson	La Bau	White	Williams
Campbell	Godard	Low	Wilbor	Wolcott
Folger	Kline	Sessions		13

The question being upon the resolution of Mr. Low, Mr. H. C. Murphy moved that the same be laid upon the table.

The President put the question whether the Senate would agree to said motion, and it was decided in the negative, as follows:

FOR THE AFFIRMATIVE.

C. G. Cornell	Lent	H. C. Murphy	T. Murphy	Stanford	5

FOR THE NEGATIVE.

Bennett	Folger	Humphrey	Low	Wilbor	
Campbell	Gibson	Kline	Sessions	Williams	
Collins	Godard	La Bau	White	Wolcott	15

The President then put the question whether the Senate would agree to said resolution of Mr. Low, and it was decided in the affirmative, as follows:

FOR THE AFFIRMATIVE.

Bennett	Godard	La Bau	H. C. Murphy	Wilbor	
Campbell	Humphrey	Lent	Sessions	Williams	
Collins	Kline	Low	Stanford	Wolcott	
Gibson					16

FOR THE NEGATIVE.

Folger	T. Murphy	White	3

Mr. Folger offered the following resolution:

Resolved, That a committee of three be appointed by the President, in accordance with the foregoing resolution.

The President put the question whether the Senate would agree to said resolution, and it was decided in the affirmative.

The President appointed Messrs. Folger, Low and H. C. Murphy, as such committee.

Mr. Smith, counsel for respondent, moved that the further proceedings in this case be postponed until the 1st Tuesday of January next.

Mr. Gibson moved that the Senate chamber be cleared for the purpose of consultation.

The President put the question whether the Senate would agree to said motion, and it was decided in the affirmative.

After consultation, Mr. Gibson moved that the motion be denied.

The President put the question whether the Senate would agree to said motion, and it was decided in the affirmative.

The doors were then opened and the result announced.

Henry Waterbury, Esq., then opened the case on the part of the prosecution.

The hour of 2 o'clock having arrived, the Senate took a recess until 4 o'clock P. M.

FOUR O'CLOCK P. M.

The Senate again met, and case proceeded with on part of the prosecution.

The hour of 7 o'clock having arrived, the Senate adjourned until to-morrow morning at 9 o'clock.

THURSDAY, AUGUST 30, 1866.

The Senate met pursuant to adjournment.

The journal of yesterday was read and approved.

No quorum being present,

On motion of Mr. Sessions, the Senate took a recess until 9½ o'clock A. M.

HALF-PAST NINE O'CLOCK A. M.

The Senate again met.

The Clerk called the roll, when the following members were found to be present:

Messrs. Barnett, Bennett, Campbell, C. G. Cornell, Folger, Gibson, Godard, Humphrey, La Bau, Lent, Low, H. C. Murphy, Sessions, White, Wilbor and Wolcott—16.

No quorum being present,

Mr. Bennett moved that the Senate take a recess until 10 o'clock.

The President put the question whether the Senate would agree to said motion, and it was decided in the negative.

A quorum having appeared, the case was continued on the part of the prosecution.

After which,

The prosecution rested, and Mr. Shafer, counsel for respondent, opened the case for defence.

Mr. Folger moved that the 4th rule shall not be enforced so as to require a question to a witness, and the objection to it, to be reduced to writing, unless specially requested by a Senator.

The President put the question whether the Senate would agree to said motion, and it was decided in the affirmative.

Witnesses sworn on part of respondent: Hiram T. Jenkins and Joseph Benedict.

Counsel for respondent moved that the Senate take a recess until 4 o'clock P. M.

Mr. Folger moved to amend, making it 3 o'clock.

The President put the question whether the Senate would agree to said motion to amend, and it was decided in the affirmative.

The President then put the question whether the Senate would agree to said motion, as amended, and it was decided in the affirmative.

Whereupon, the Senate took a recess until 3 o'clock P. M.

THREE O'CLOCK P. M.

The Senate again met.

Witnesses sworn on part of respondent: Joseph S. Avery, George F. Weaver, Allen W. Reynolds and George W. Smith.

The hour of adjournment having arrived,

Mr. H. C. Murphy moved that the rule in regard to adjournment be suspended for this day.

The President put the question whether the Senate would agree to said motion, and it was decided in the affirmative.

The examination of witnesses on part of respondent was continued.

At 7 o'clock and 40 minutes, on motion of Mr. Folger, the Senate adjourned.

FRIDAY, AUGUST 31, 1866.

The Senate met pursuant to adjournment.

No quorum being present, Mr. Gibson moved that the Senate take a recess until 9¼ o'clock A. M.

The President put the question whether the Senate would agree to said motion, and it was decided in the affirmative.

QUARTER-PAST NINE O'CLOCK A. M.

The Senate again met.

Examination of witnesses on the part of respondent.

Counsel for prosecution offered to read in evidence a certain letter, without signature, and also certain telegrams.

Counsel for respondent objected.

After argument by the counsel,

Mr. Sessions moved that the Senate chamber be cleared for consultation.

The President put the question whether the Senate would agree to said motion, and it was decided in the affirmative.

Mr. H. C. Murphy moved that, as the sense of the Senate, the letter proposed to be read by the counsel for prosecution is inadmissible in the present stage of the case.

Mr. Stanford moved to amend, by including the telegrams.

The President put the question whether the Senate would agree to said motion to amend, and it was decided in the affirmative.

The President then put the question whether the Senate would agree to said motion, as amended, and it was decided in the negative, as follows:

FOR THE AFFIRMATIVE.

C. G. Cornell	Humphrey	Lent	T. Murphy	Wilbor	
Folger	Kline	H. C. Murphy	Stanford		9

FOR THE NEGATIVE.

Bennett	Collins	Godard	Low	White	
Campbell	Gibson	La Bau	Sessions	Wolcott	10

Mr. H. C. Murphy moved a reconsideration of the vote just taken.

The President put the question whether the Senate would agree to said motion to reconsider, and it was decided in the affirmative.

Mr. Low moved that the letter offered by the counsel for prosecution be read.

The President put the question whether the Senate would agree to said motion, and it was decided in the negative.

Mr. H. C. Murphy moved to reconsider the vote upon the amendment offered by Mr. Stanford.

The President put the question whether the Senate would agree to said motion to reconsider, and it was decided in the affirmative, as follows:

FOR THE AFFIRMATIVE.

Campbell	Humphrey	H. C. Murphy	Stanford	Wilbor	
C. G. Cornell	Kline	T. Murphy	Sutherland	Wolcott	
Folger	Lent	Sessions	White		14

FOR THE NEGATIVE.

Collins	Gibson	Godard	La Bau	Low	5

The President then put the question whether the Senate would agree to said motion of Mr. H. C. Murphy, that the said letter is inadmissible, and it was decided in the negative, as follows:

FOR THE AFFIRMATIVE.

C. G. Cornell	Humphrey	Lent	T. Murphy	Sutherland	
Folger	Kline	H. C. Murphy	Stanford		9

FOR THE NEGATIVE.

Bennett	Gibson	La Bau	Sessions	Wilbor	
Campbell	Godard	Low	White	Wolcott	
Collins					11

Mr. Sessions moved that the letter and telegrams offered be admitted in evidence.

The President put the question whether the Senate would agree to said motion, and it was decided in the affirmative, as follows:

FOR THE AFFIRMATIVE.

Bennett	Gibson	La Bau	Sessions	Wilbor	
Campbell	Godard	Low	White	Wolcott	
Collins					11

FOR THE NEGATIVE.

C G. Cornell	Humphrey	Lent	T. Murphy	Sutherland	
Folger	Kline	H. C. Murphy	Stanford		2

The doors were opened, and the result announced.

At 1 o'clock, on motion of Mr. Low, the Senate took a recess until 3½ o'clock P. M.

HALF-PAST THREE O'CLOCK P. M.

The Senate again met, and the examination of witnesses concluded.

Mr. Gibson offered the following resolution:

Resolved, That the further proceedings in this case be adjourned to the first Tuesday in January next, and that so much of the case as has not yet been printed, be printed forthwith; and that one copy thereof be furnished by mail immediately to each Senator, and three copies to each of the counsel on each side.

The President put the question whether the Senate would agree to said resolution, and it was decided in the affirmative.

Whereupon, the President declared the Senate adjourned until the first Tuesday in January next.

TUESDAY, JANUARY 1, 1867.

The Senate being in regular session, Mr. Folger offered the following resolution:

Resolved, That the Senate will on the — day of January, instant, at — o'clock in the afternoon, commence the hearing of the arguments in the case of the County Judge of Oneida county, and will continue such session from day to day, at that hour, until the matter is disposed of, or until otherwise ordered.

Mr. Folger moved to lay the resolution upon the table.

The President put the question whether the Senate would agree to said motion to lay on the table, and it was decided in the affirmative.

WEDNESDAY, JANUARY 2.

Mr. Folger called for the consideration of the resolution offered by him, as follows:

Resolved, That the Senate will on the — day of January, instant, at — o'clock in the afternoon, commence the hearing of the arguments in the case of the County Judge of Oneida county, and will continue such session from day to day, at that hour, until the matter is disposed of, or until otherwise ordered.

Mr. Sessions moved that the time be fixed to-morrow, after the special order already made shall be disposed of.

The President put the question whether the Senate would agree to said motion, and it was decided in the affirmative.

The President then put the question whether the Senate would agreed to said resolution as amended, and it was decided in the affirmative.

Mr. Folger moved that the Clerk be directed to cause a copy of the foregoing resolution to be served personally upon the counsel for respondent.

The President put the question whether the Senate would agree to said motion, and it was decided in the affirmative.

THURSDAY, JANUARY 3.

The Senate then proceeded to the consideration of the special order, being the hearing of arguments in the case of the County Judge of Oneida county.

Mr. Folger offered the following resolution:

Resolved, That one counsel for the prosecution be heard in opening the case for the people, and that one or two counsel be heard for the respondent in reply, and that one counsel for the prosecution be heard in conclusion; and that on the 9th day of January, instant, at 3 P. M., be fixed as the time for the commencement of the argument, and that the further consideration of

the case continue from day to day, at that hour, until the matter is concluded or until otherwise ordered; and that the Senate will hold a special session at such time for that purpose.

The President put the question whether the Senate would agree to said resolution, and it was decided in the affirmative.

WEDNESDAY, JANUARY 9.

The Senate proceeded to the consideration of the case of the County Judge of Oneida county.

Mr. Shafer, counsel for respondent, resumed the argument on behalf of defence.

Mr. Smith, counsel for respondent, also submitted argument on behalf of defence.

At 6 o'clock, on motion of Mr. Gibson, the Senate adjourned.

THURSDAY, JANUARY 10.

The Senate proceeded to the consideration of the case of the Judge of Oneida county.

Mr. Sedgwick, counsel for the prosecution, submitted argument on the part of the people.

Mr. Kline moved that the case be made the special order to-morrow, immediately after the regular order of business.

Mr. Folger moved that it be made the special order to-morrow, at 3 o'clock P. M.

The President put the question whether the Senate would agree to said motion to amend, and it was decided in the affirmative.

The President then put the question whether the Senate would agree to said motion as amended, and it was decided in the affirmative.

On motion of Mr. Gibson, the Senate adjourned.

FRIDAY, JANUARY 11.

Mr. Pierson moved to reconsider the vote making the consideration of the case of the County Judge of Oneida county, the special order for 3 o'clock P. M., to-day.

The President put the question whether the Senate would agree to said motion, and it was decided in the affirmative.

Mr. Pierson moved that it be made the special order for Thursday next, at 3½ o'clock P. M.

The President put the question whether the Senate would agree to said motion, and it was decided in the affirmative.

THURSDAY, JANUARY 17.

The Senate proceeded to the consideration of the case of the County Judge of Oneida county.

Mr. Sedgwick, counsel for prosecution, resumed his argument on part of the people.

Having concluded, Mr. Crowley moved that the further consideration of the case be made the special order to-morrow morning, immediately after the reading of the Journal.

The President put the question whether the Senate would agree to said motion, and it was decided in the affirmative.

On motion of Mr. H. C. Murphy, the Senate adjourned.

FRIDAY, JANUARY 18.

The President announced the special order, being the consideration of the case of the County Judge of Oneida county.

Mr. Crowley offered the following resolution:

Resolved, That the findings and decision in the matter of the removal of George W. Smith, county judge of Oneida county, be made the special order for Thursday, January 24th, immediately after the reading of the journal on that day.

The President put the question whether the Senate would agree to said resolution, and it was decided in the affirmative.

THURSDAY, JANUARY 24.

The President announced the special order, being the consideration of the case of the County Judge of Oneida county.

Mr. Sessions moved that the Senate chamber be cleared for the purpose of deliberation.

The President put the question whether the Senate would agree to said motion, and it was decided in the affirmative.

In pursuance of the 7th rule, the Clerk read the first charge preferred against the accused, as follows:

1st. That the said George W. Smith being such judge as aforesaid, and being authorized by the laws of the State of New York to decide upon the claims of citizens of said county to exemption from service in the militia of said State, did, in numerous instances, draw up as attorney or counsel for the applicants for such exemption the necessary papers to secure such exemption, and did receive pay therefor, as such attorney and counsel, knowing that the several cases so prepared were to come before him for examination or decision thereon, and afterwards passing upon and deciding the same in his judicial capacity. This was done at different times and dates during the years 1862, 1863 and 1864, at the city of Utica, in said county of Oneida, the precise dates and names being unknown.

The President then proposed to each Senator the question, "Senator, how say you, is the first charge preferred against the accused proven?" when each Senator rose in his place, and responded as follows:

AS PROVEN.

Andrews	Collins	Folger	La Bau	Sessions	
Barnett	C. G. Cornell	Gibson	Lent	White	
Bennett	E. Cornell	Godard	T. Murphy	Wilbor	
Campbell	Crowley	Kline	O'Donnell	Wolcott	20

AS NOT PROVEN.

Humphrey	H. C. Murphy	Stanford	Sutherland	Williams	5

The Clerk then read the second charge preferred against the accused, as follows:

2d. That the said George W. Smith being such judge as aforesaid, and having one Henry T. Utley as a law partner, he, the said Smith, being authorized by the laws of the State of New York to decide upon the claims of citizens of the said county of Oneida to exemption from service in the militia of said State, did suffer and permit the said Utley, as attorney and counsel for applicants for such exemption, to prepare the papers therefor, and to receive pay therefor, as such attorney and counsel, he being entitled to and receiving, as a partner of the said Utley, a share of such fees and charges, and knowing that the several cases so prepared by the said Utley were to come before him for examination and decision thereon, and afterwards passing upon and deciding the same

in his official capacity. This was done at Utica aforesaid, at different dates during the years 1862, 1863, 1864 and 1865, the precise dates and names being unknown.

The President then proposed to each Senator the question, "Senator, how say you, is the second charge preferred against the accused proven?" when each Senator rose in his place, and responded as follows:

AS PROVEN.

Andrews	C. G. Cornell	Godard	H. C. Murphy	Sutherland	
Barnett	E. Cornell	Humphrey	T. Murphy	White	
Bennett	Crowley	Kline	O'Donnell	Wilbor	
Campbell	Folger	La Bau	Sessions	Williams	
Collins	Gibson	Lent	Stanford	Wolcott	25

The third charge having been read by the Clerk, being in the words following:

3d. That the said George W. Smith, being such county judge as aforesaid, and as such, under the laws of this State, having the controlling voice in the appointment of excise commissioners in the said county of Oneida, did, with a view to his own personal advantage and gain, procure the appointment of Aaron W. Reynolds, George F. Weaver and Samuel P. Lewis as such commissioners; and did afterwards, to wit, in or about the month of February, A. D. 1865, with the same intent, procure from the commissioners so appointed, his own appointment, in writing, as the prosecuting attorney of the said board of commissioners, the same being a valuable office and appointment; that one Samuel J. Barrows, at and before such appointment of said Smith, held the said office under the appointment of the said board, and had discharged the duties thereof in a satisfactory manner; that the appointment of the said Smith was not published, but was kept secret; that afterwards, and on or about the 22d day of March, A. D., 1865, the said Smith sold the said office and appointment to the said Barrows for the sum of $500, which was paid by the said Barrows and received by the said Smith therefor, and such appointment in writing given up to said Barrows and destroyed; that at the time of the payment of said money as aforesaid, and as a part of the same transaction, it was corruptly proposed and agreed by the said Smith that he would continue in office and reappoint one of the said commissioners, viz: the said Weaver, for the purpose of securiug the said office to the said Barrows; that it was understood by and between the said parties, that by the sale and giving up of said office and appointment by the said Smith, the said Barrows would continue in said office and employ-

ment, and could secure his own re-appointment thereto, which has been done, and said Barrows did continue in said office, and has hitherto and still does so continue, and has been re-appointed thereto. And it was further understood that said Smith was not thereafter to interfere with said Barrows in said office, but was to aid in continuing him therein, and securing the same to him.

The President then proposed to each Senator the question, "Senator, how say you, is the third charge preferred against the accused proven?" when each Senator rose in his place, and responded as follows:

AS PROVEN.

Barnett	Campbell	E. Cornell	White	Wolcott	
Bennett					6

AS NOT PROVEN.

Andrews	Folger	Kline	T. Murphy	Sutherland	
Collins	Gibson	La Bau	O'Donnell	Wilbor	
C G. Cornell	Godard	Lent	Sessions	Williams	
Crowley	Humphrey	H. C. Murphy	Stanford		19

The Clerk read the fourth charge preferred against the accused, as follows:

4th. That the said George W. Smith, being such county judge, as aforesaid, and as such under the laws of this State having the controlling voice in the appointment of excise commissioners in the said county of Oneida, did, with a view to his own personal advantage and gain, procure the appointment of Aaron W. Reynolds, George T. Weaver, and Samuel P. Lewis as such commissioners; and did, afterwards, to wit, in or about the month of February, A. D. 1865, with the same intent, procure from the commissioners so appointed, his own appointment, in writing, as the prosecuting attorney of the said board of commissioners, the same being a valuable office and appointment. That the said Smith, just prior to his said appointment, and with a view to his own gain and advantage, did propose to one James G. French, an attorney and counselor-at-law, residing at Utica, in said county, and to one William B. Taylor, as a friend of said French, that he would procure the said appointment for him the said French, or would give him his influence as county judge in that behalf, provided and on condition that the said French would go into partnership with the said Smith in that business or the business pertaining to that office and appointment, and would accept for his services one third of the emoluments or profits of the same, and give to the said county judge two thirds of such profits and emoluments, which proposition was rejected by said French. And,

further, that, after the said county judge had received the said office or appointment for himself, he made substantially the same proposition to the said Samuel J. Barrows, before the sale of said office to him, as in the last preceding charge specified and set forth.

The President then proposed to each Senator the question, "Senator, how say you, is the fourth charge preferred against the accused proven?" when each Senator rose in his place and responded as follows:

AS PROVEN.

Barnett	Campbell	E. Cornell	White	Wolcott	
Bennett					6

AS NOT PROVEN.

Andrews	Folger	Kline	T. Murphy	Sutherland	
Collins	Gibson	La Bau	Sessions	Wilbor	
C. G. Cornell	Godard	Lent	Stanford	Williams	
Crowley	Humphrey	H. C. Murphy			18

The Clerk read the fifth charge preferred against the accused, as follows:

5th. That at and before the time of the transaction hereinafter stated and charged, one Henry T. Utley was the law partner of the said George W. Smith. That, on or about the fifth day of January, A. D. 1865, one Charles E. Norton was confined in the county jail of Oneida county upon a charge of grand larceny. That the said Smith, being the friend of one Major John A. Haddock, then the acting assistant provost marshal general of the western district of New York, and, having authority in the premises, applied to and used his influence with the said Haddock to procure, and did procure from him a special order that the said Norton should be mustered into the military service of the United States, and that the bounty to which said Norton would become entitled on such muster in said county of Oneida, being the sum of six hundred dollars or over, should be paid to and retained by the said Utley, the law partner of said Smith. That upon procuring said order, and upon the application of the said Utley, the said county judge let the said Norton to bail—the said Utley becoming his surety, and thereupon said Norton was mustered into the service of the United States, and his bounty, amounting to six hundred dollars, was paid to the said Utley. That it was understood and agreed between the parties to this transaction that such bail bond was not to be enforced against said Utley, and that, in pursuance of such understanding, the said county judge retained

the same in his own possession and control, and did not file the same in the clerk's office of said county, nor deliver the same to the district attorney of said county, as by law he was required.

The President then proposed to each Senator the question, "Senator, how say you, is the fifth charge preferred against the accused proven?" when each Senator rose in his place and responded as follows:

AS PROVEN.

Andrews	E Cornell	Godard	T. Murphy	White	
Barnett	Crowley	Kline	O'Donnell	Wilbor	
Bennett	Folger	La Bau	Sessions	Williams	
Campbell	Gibson	Lent	Sutherland	Wolcott	20

AS NOT PROVEN.

Collins	C. G. Cornell	Humphrey	H. C. Murphy	Stanford	5

Mr. Crowley moved that the further consideration of the case be made the special order for this evening at 7½ o'clock.

Mr. Humphrey moved to amend that it be made the special order to-morrow morning, immediately after the reading of the journal.

The President put the question whether the Senate would agree to said motion to amend, and it was decided in the affirmative.

The President then put the question whether the Senate would agree to said motion as amended, and it was decided in the affirmative.

Mr. Godard moved that the Senate adjourn until to-morrow morning at 10 o'clock, A. M.

The President put the question whether the Senate would agree to said motion, and it was decided in the affirmative.

Whereupon the Senate adjourned.

FRIDAY, JANUARY 25.

The Senate proceeded to the consideration of the case of the County Judge of Oneida county.

Mr. La Bau moved that the Senate go into secret session.

The President put the question whether the Senate would agree to said motion, and it was decided in the affirmative.

Mr. Sessions moved that the further consideration of the case be postponed until Wednesday next, at 10 o'clock A. M.

The President put the question whether the Senate would agree

to said motion, and it was decided in the negative, two-thirds of all the Senators present not voting in favor thereof, as follows:

FOR THE AFFIRMATIVE.

Barnett	Collins	Kline	Sessions	Williams	
Bennett	Godard	T. Murphy	Sutherland		9

FOR THE NEGATIVE.

Campbell	Folger	La Bau	H. C. Murphy	Wilbor	
E. Cornell	Gibson	Lent	Stanford	Wolcott	
Crowley	Humphrey				12

The clerk then read the sixth charge preferred against the accused, as follows:

6th. That some time prior to the month of January, A. D. 1865, one John A. Haddock had been appointed to, and then held the office of Acting Assistant Provost Marshal General of the western division of the State of New York, with the rank of Major, and having his head-quarters established at Elmira. That the said Haddock had long been the friend of and intimate with the said George W. Smith, and advised him of his expected appointment, and after it was obtained had a long interview with him at Utica, in reference thereto. That at the same time one Aaron Richardson was a notorious substitute and bounty broker. That one John D. Collins, residing at Utica, and having a desk in the office of the said county judge then and for a long time previous thereto, was employed by the said Richardson as his clerk, and to assist him in his aforesaid business. That with a view to the mutual and personal pecuniary but corrupt and unlawful gain and advantage of the said Haddock, Richardson and Smith, and for the purpose of securing peculiar and special facilities, and unfair and unlawful advantages to the said Richardson in his said business, in Oneida county and elsewhere in the said western division, a corrupt and unlawful arrangement and combination was entered into by and between the said George W. Smith and the said Richardson and the said Haddock, acting upon the solicitation and under the personal and official influence of said Smith, by which such peculiar and special facilities and improper and unlawful advantages were secured to said Richardson in his said business of recruiting and bounty brokerage. That among other things the said Smith did on or about the 8th or 9th day of January, A. D. 1865, at the request and on the behalf of the said Richardson, go to Elmira, aforesaid, and did procure from the said Haddock, two several letters to Lieutenant Colonel D. W. C. Poole, then acting Provost Marshal at Utica, in the words and figures following, viz:

HEADQUARTERS A. A. PROV. MAR. GEN. & SUPT. OF VOL.
RECRUITING SERVICE WEST. DIV. S. OF N. Y.,
ELMIRA, N. Y., *January* 9, 1865.

Lt. Colonel D. W. C. POOLE, *Acting Prov. Mar., Utica, N. Y.:*

Colonel—I have the honor to inform you that I have acquaintance with Mr. J. D. Collins, of Utica, and know him to be a fine clerk. You, unless good reasons are apparent to the contrary, treat enlistment papers made out under his direction and in his office, during the hurry of recruiting, as though made out by one of your enlisting clerks—taking care, however, to see that such papers are made out in conformity to law and regulations.

Very respectfully, your ob't servant,

JNO. A. HADDOCK,
Maj. and A. A. P. M. G.

HEADQUARTERS A. A. PROV. MAR. GEN. & SUPT. OF VOL.
RECRUITING SERVICE WEST. DIV. S. OF N. Y.,
ELMIRA, N. Y., *January* 10, 1865.

Lt. Colonel POOLE, *Acting Prov. Marshal, Utica, N. Y.:*

Colonel—The true construction of Order No. 23, Department of the East, dated March 25th, 1864, and promulgated from this office, with an intimation that the spirit of that order would govern me in passing upon cases arising in this Division, will be held by me to be that if recruits or substitutes are fully informed by the Provost Marshal, of their rights as to local and government bounties, they may thereafter assign to any person such portion of their local bounty as they may elect, not exceeding five-eighths thereof. The Provost Marshal should take pains to inquire fully into bargains made with recruits and substitutes, and hold both parties to a strict performance of their agreements, not forgetting that recruiting agents have rights that should be respected as well as recruits or substitutes.

I am, Colonel, very respectfully

Your obedient servant,

(Signed) JNO. A. HADDOCK,
Maj. and A. A. P. M. G., W. Div. of N. Y.

That in further pursuance of such scheme and arrangement said Richardson went himself to Elmira, starting on the same day with Smith, and passing him on the way, reaching Elmira in advance of Smith, and advising said Haddock that he was coming, and the purpose of his visit. That Haddock on that occasion gave to

Richardson several letters to various provost marshals in his division, commending him to their confidence. That afterwards, and in pursuance of such corrupt scheme and arrangement, the said Richardson, at Canandaigua, on or about the 21st day of January, A. D. 1865, presented to said Haddock a valuable horse, cutter, harness and robes, of the value of $500 and upwards. That afterwards. and on or about the 25th day of the same month, he presented to said Haddock $2,000 in cash. That in further performance of said corrupt scheme, the said Haddock sent to the said Richardson, at Utica, advice by telegraph, as follows: On January 24th: "She will be there to-morrow; watch for her." On the same day; "It stands at 2,088." On January 25th: "She was sent to you yesterday. Has she come? Do you want another one for the others? I wrote you last night." That these telegrams were intended to advise said Richardson of the quota of the 21st Congressional district, being said county of Oneida. That afterwards, and on the 30th day of January, A. D. 1865, the said Haddock gave to said Richardson a paper showing the surplus of the several sub-divisions of said district, as shown by the report of quotas and credits to the 31st day of December, 1864. That at the same time the said Haddock gave to said Richardson a letter of that date to Capt. Crandall, who had succeeded said Col. Poole as Provost Marshal of said district. The said paper and said letter are in the words and figures following, viz:

"Surplus of sub-districts in the 21st Congressional district, as shown by report of quotas and credits, dated December 31st, 1864:

Annsville	9
Augusta	1
Ava	3
Boonville	24
Bridgewater	9
Camden	2
Deerfield	4
Florence	2
Floyd	1
Kirkland	3
Lee	3
Marshall	5
New Hartford	2
Paris	2

Remsen	4
Rome	12
Steuben	1
Trenton	8
Utica, 1st ward	4
" 3d ward	18
" 4th ward	5
" 5th ward	7
" 6th ward	24
" 7th ward	8
Vernon	1
Western	3
Westmoreland	1
Whitestown	20
	193
Oneida county at large	17
	210
Deficiency	4
	206

ELMIRA, N. Y., *January* 30, 1865.

Captain CRANDALL, *Provost Marshal, Utica, N. Y.:*

Captain—From my acquaintance with Mr. Aaron Richardson, of Albany, I am well convinced that he is a man of integrity, and that he will do as he agrees. Such men are very valuable in putting in men, as his acquaintance is very extensive and his resources many. I hope you will grant him all reasonable indulgence. He is a man of property, and can back up his statements.

Very respectfully, your obedient servant,

(Signed) JNO. A. HADDOCK,
Maj. and A. A. P. M. G.

That at some time after the appointment of said Crandall as Provost Marshal at Utica, the said Richardson had deposited with him a large amount, to wit: twenty thousand dollars of the bonds of Oneida county, as security either that the men enlisted by him would not desert, or that they should be credited to the said county or district; that these facts and others connected with the transactions between the said Haddock and the said Richardson, were communicated to and well known to the said Smith,

who was, during this time, in correspondence with said Haddock, and in frequent personal communication with the said Richardson after his return from Elmira, and during the months of January and February, 1865; that afterwards, and on or about the third day of March, A. D. 1865, the said Smith again went to Elmira and saw Haddock, and became fully acquainted with all his transactions with the said Richardson, as hereinbefore set forth; that on that occasion he tried to procure from the said Haddock an order for the surrender of the said $20,000 of bonds so deposited as aforesaid by the said Richardson with said Haddock, and also bonds of other parties deposited in like manner, and for the same purpose; that said Haddock on that occasion gave to his clerk, one S. Floyd Hoard, an order upon said Crandall for the delivery to him of the said bonds, and the said Hoard and said Smith, on the evening of that day, went from Elmira to Rochester, where the said Richardson had proposed to meet said Haddock at that time; that the said Smith and the said Hoard met Richardson the next morning, and that said Smith then endeavored to procure from the said Richardson the telegrams, letters and papers hereinbefore stated, and others tending to show the corrupt arrangement between said Haddock and said Richardson in relation to recruiting, and among other corrupt inducements thereto, assured him that said $20,000 of bonds, for which said Hoard had an order, would, if surrendered by said Crandall, be given up by said Haddock to Richardson; that immediately after his return to Utica, the said Smith, on the fifth or sixth day of March, at the request of said Richardson, returned to Elmira; that on this occasion said Smith took a written memorandum prepared by said Collins, the clerk of said Richardson, containing several requests, to be presented to said Haddock on behalf of said Richardson, to wit (substantially):

1. To grant furloughs to three men put in by Richardson (and who were deserters).
2. To send a guard to Utica.
3. To allow said Crandall to muster men for other districts.
4. To direct Crandall to give up the said $20,000 bonds to Richardson.
5. To have certain credits allowed to Richardson.

That before going to Elmira on this occasion, the said Smith received such memorandum in writing, and took it with him; that he there arranged at Elmira for a personal interview between the

said Haddock and Richardson at some future day, which was afterwards arranged by telegraph by and between said Smith and Richardson, and took place at the Osborne House in Rochester on the tenth day of March thereafter; that the said Smith was there and occupied the same room with said Haddock; that on this occasion it was arranged between the said Haddock and Richardson that (among other things) said Richardson, in consideration of favors from said Haddock, was to send him by said Smith the sum of $5,000.

That said Smith and Richardson returned to Utica, and soon thereafter, to wit: On the 13th day of March, the said Richardson, by the consent and with the knowledge of said Smith, caused a telegram to be sent from Rome to said Haddock, requesting him to order Major Beadle, then Provost Marshal at Utica, to muster men for Oswego, to which the following answer was returned, viz:

ELMIRA, *March* 10, 1865.

GEORGE W. SMITH, *County Judge:*

I have given directions as requested by you.

JNO. A. HADDOCK.

That afterwards, and on or about the 16th day of March, 1865, the said Richardson gave to said Smith, in his office, the sum of $5,000, in seven-thirty notes, to take to Haddock pursuant to the aforesaid arrangement at Rochester. That said Smith saw Haddock on the 18th day of March, and exhibited the said bonds to him, that he had at the same time the aforesaid memorandum given him by said Collins at Utica. Afterwards another meeting was arranged by telegraph, and was had at Canandaigua between said Smith and Haddock on said Richardson's business. Haddock had declined to receive the $5,000, and Smith had returned the money to Richardson.

The said Haddock had, besides the said telegrams and papers hereinbefore particularly referred to and set forth, sent to said Richardson various other letters and telegrams, tending to implicate him and furnish evidence of his misconduct in his said office, and to subject him to military censure and punishment. That the said Haddock desired to recover and suppress such papers and evidence. That he procured the said Smith to endeavor to recover the said papers from said Richardson. That said Smith, at the time when he was pretending to act as the friend and counsel of said Richardson, was likewise acting for said Haddock, and on

his retainer and employment in endeavoring to procure from said Richardson such papers with a view to suppress such evidence.

That for the services in behalf of said Richardson, hereinbefore set forth, and in pursuance of the aforesaid scheme and arrangement, the said Smith demanded of the said Richardson the sum of two thousand dollars.

The President then proposed to each Senator the question, "Senator, how say you, is the sixth charge preferred against the accused proven?" when each Senator rose in his place, and responded as follows:

AS PROVEN.

Barnett	E. Cornell	Godard	La Bau	White
Bennett	Folger	Humphrey	Lent	Wilbor
Campbell	Gibson	Kline	O'Donnell	Wolcott
Collins				16

AS NOT PROVEN.

Crowley	T. Murphy	Stanford	Sutherland	Williams
H. C. Murphy	Sessions			7

The Clerk then read the seventh charge preferred against the accused, as follows:

7th. That the said George W. Smith did, while holding said office at Utica, in the said county, on or about the 16th day of March, 1865, receive from one Aaron Richardson, a person then engaged in the business of bounty broker, the sum of five thousand dollars in seven-thirty government notes, upon the understanding and for the purpose of offering the same to the said John A. Haddock, then acting Assistant Provost Marshal General of the western division of New York, as a bribe for favors granted or to be granted to said Richardson, and did knowingly and corruptly bear and offer the said bribe to the said Haddock for the purpose aforesaid.

The President then proposed to each Senator the question, "Senator, how say you, is the seventh charge preferred against the accused proven?" when each Senator rose in his place, and responded as follows:

AS PROVEN.

Barnett	Collins	Godard	O'Donnell	Wilbor
Bennett	E. Cornell	La Bau	White	Wolcott
Campbell	Gibson			12

AS NOT PROVEN.

Crowley	Kline	H. C. Murphy	Sessions	Sutherland
Folger	Lent	T. Murphy	Stanford	Williams
Humphrey				11

The Clerk then read the eighth charge preferred against the accused, as follows:

8th. That the said George W. Smith, being such county judge as aforesaid, did heretofore, to wit, on the 10th day of March, 1865, and at other times, at Utica aforesaid, and also at Rochester, endeavor to procure from the said Aaron Richardson certain letters and telegrams, addressed and sent to him, and certain other paper writings delivered to him by the said John A. Haddock, which papers tended to prove that the said Haddock had been guilty of misconduct and mal-administration in his office of acting Assistant Provost Marshal General of the western division of New York, with a view to suppress the evidence contained in said papers and to screen said Haddock from just censure and punishment, he, the said Smith, well knowing the character and general contents of said papers, and the purposes for which their return was sought.

The President proposed to each Senator the question, "Senator, how say you, is the eighth charge preferred against the accused proven?" when each Senator rose in his place, and responded as follows:

AS PROVEN.

Barnett	E. Cornell	Humphrey	H. C. Murphy	Wilbor	
Bennett	Folger	Kline	O'Donnell	Williams	
Campbell	Gibson	La Bau	White	Wolcott	
Collins	Godard				17

AS NOT PROVEN.

Crowley	T. Murphy	Sessions	Stanford	Sutherland	
Lent					6

The Clerk then read the ninth charge preferred against the accused, as follows:

9th. That the said George W. Smith, being county judge as aforesaid, habitually neglected the duties of said office, and was unreasonably absent from his office, without any sufficient reason or excuse, and that he was engaged, either for himself or others, in the business of furnishing recruits and substitutes, and bounty brokerage, a business inconsistent with the proper discharge of the duties of his place, and to the great loss and detriment of persons having business before him as county judge, or in the county court of said county; that such neglect has extented through the whole of his term as county judge.

The President then proposed to each Senator the question, "Senator, is the ninth charge preferred against the accused pro-

ven?" when each Senator rose in his place, and responded as follows:

AS NOT PROVEN.

Barnett	Crowley	Kline	O'Donnell	White	
Bennett	Folger	La Bau	Sessions	Wilbor	
Campbell	Gibson	Lent	Stanford	Williams	
Collins	Godard	H. C. Murphy	Sutherland	Wolcott	
E. Cornell	Humphrey	T. Murphy			23

Mr. Williams moved that the further consideration of the case be postponed until Wednesday next, at 10 o'clock A. M.

The President put the question whether the Senate would agree to said motion, and it was decided in the negative, two-thirds of all the Senators present not voting in favor thereof.

The President then put the question to each Senator, "Shall George W. Smith be removed from his office of County Judge of Oneida county, for the cause stated in the item of the charges preferred against him, which you have found proven?" when each Senator, as his name was called by the Clerk, rose in his place and responded as follows:

FOR REMOVAL.

Barnett	E. Cornell	Godard	Lent	White	
Bennett	Crowley	Humphrey	T. Murphy	Wilbor	
Campbell	Folger	Kline	O'Donnell	Williams	
Collins	Gibson	La Bau	Sessions	Wolcott	20

AGAINST REMOVAL.

H. C. Murphy	Stanford	Sutherland	3

Mr. Gibson moved that each Senator be permitted to place upon the journal his reasons for the vote which he has given.

The President put the question whether the Senate would agree to said motion, and it was decided in the affirmative.

Upon the question of removal, Mr. Stanford, before voting said:

Mr. President—I have, after as careful consideration of the testimony and arguments in this case as it was in my power to give, voted that most of the charges against the defendant are not clearly and fully proven. But while to my mind enough has been proven, in the main, to justify me in voting for his removal from office, as I am called upon to base my final decision upon the specific charges which I find proven, I feel compelled to vote, as I do, against the removal.

Under the resolution of the Senate allowing each Senator the privilege of placing upon the journal of the Senate the reason for his vote on removal of Judge Smith, Mr. Gibson submitted the following:

Mr. President—My reasons why George W. Smith, the respon-

dent, ought to be removed from the office of county judge of the county of Oneida, are: That from the evidence I am satisfied that he was guilty of extortion in taking a fee for a service rendered by him while county judge, the service being connected with an official act, when no fee for such service was allowed by law. This is forbidden by statute (2 *R. S. 5th Ed.* 930). This service was rendered under the statute organizing the National Guard, by which the county judge was required to hear and determine all applications for exemption from any draft made under the act. The respondent, acting under this statute, prepared the proof required by the act to be "presented to the county judge," and heard the application and discharged the applicant, receiving thereon a compensation for drawing up the affidavit.

This was a violation of this statute. In 2d Revised Statutes 275, section 5, he is forbidden to receive compensation for advice in matters before him, and by the Session Laws 1847, chapter 470, section 52, he is forbidden to charge or receive pay for drawing any paper in any matter before him. This evil of extortion by public officers had become so great, that judges were required by law to charge grand jurors specially as to the law upon the subject. And in order that it might be more fully abrogated, the fundamental law in 1846, ordained that no judicial officer, except justices of the peace, should take to his own use any fees or perquisites. (*Act.* 6, *Sec.* 20.)

The excuse made is that the respondent was not aware of the law making this act extortion. It is difficult to see how he could be ignorant of it. It was directly connected with the taking of fees by him, and is in the act regulating the amount of fees to be taken for official services by judges, and is the only act forbidding extortion; and the law requires that he should, as judge, charge the grand jury specially as to this offence at every session of the court. He must have frequently performed this duty. Again: the law presumes that he knew what was his duty, and it is against public policy to allow an officer to shield himself from removal by saying in excuse he did not know his duty.

It is rather an aggravation of the offense than a mitigation. It is like the excuse of drunkenness, which is never admitted as a defense, because, if allowed as such, any one wishing to commit crime could always free himself from punishment by merely getting intoxicated. So here, the judge or officer could avoid the penalty by pleading that he was not aware of the law. Ignorance

of the law has always been held to be no excuse for its violation, and should not be in the case under hearing.

But even were his ignorance as to the offense of extortion, to excuse him, he does not profess any ignorance as to the statute forbidding a judge from allowing his partner to practice before him. This statute is positive and express (*Session Laws* 1847, *chapter* 470, *section* 2), and was clearly violated by the appearance of Utley as counsel, before the respondent as county judge. The violation of any statute by any officer is a misdemeanor. (3 *R. S. 4th Ed.*, 980.)

The respondent was therefore guilty of two offences, for which he might have been indicted and punished. He prostituted his authority and dignity as judge, by allowing his law partner to procure the bailing of Norton before him. This whole transaction was grossly contrary to his duty as a judge. In the first place it was forbidden, as we have seen by the statute. In the second place he allowed himself to be used for the base purpose of putting money in the hands of the firm of which he was a member, by bounty brokerage of the most disgraceful description.

In regard to his conduct with Haddock and Richardson, the evidence is conclusive that the three were jointly guilty of conspiracy, in various forms and for various purposes. Smith and Richardson to get unlawful aid from Haddock; Haddock and Smith to obtain and suppress the evidence in the possession of Richardson, showing the guilt of Haddock. I do not wonder at the answer of Smith, when asked to characterize some of these transactions, when he said to the counsel: "Characterize it yourself." Look at one transaction. (*See evidence at pages* 366, 364, 245 *and* 246.)

Haddock and Smith, on the 3d of March, feeling the toils of justice gathering around them, got together at Elmira, and as Smith testifies, conclude to "boldly" meet the difficulty by apparently disclosing the state of affairs at Utica, and Smith then writes the telegrams to Washington as to the "bounty thieves" at Utica. This was actually done on the third, and yet the telegram was not sent until the fourth, and must have been purposely held back, because Smith, though drawing it on the third, dated it on the fourth. Why held back? Smith was to meet Richardson at Rochester on the fourth, and get the papers implicating Haddock, and the telegram to the War Department from Haddock could then safely be sent. How did Richardson know of that telegram on the 4th of March, unless he derived the knowledge from Smith?

It is hardly possible he could have got it from any other source, and Smith testifies it was spoken of. No doubt Smith gave him the information, and why? Because he wanted to induce him to give up the evidence that would endanger all concerned. Richardson saw his opportunity for greater privileges, and would not give up the papers, and did not. Then followed other negotiations, and the offer of the $5,000 from Richardson to Haddock, the respondent all the time the "go-between," and accommodating assistant between the parties. He carried the bribe of the $5,000 to Haddock, but did not, as he states, deliver it to him, or offer it—only "showed" it to him, so that Haddock saw what it was—only "called his attention to it." But this was a mere evasion, or attempted evasion of the statute, and availed nothing to defeat the prohibition.

The respondent, under the facts proved, was guilty of conspiracy. This offence, by statute, consists among other things in these: "Where two or more persons conspire to commit any act injurious to the public health, to public morals, or to trade or commerce, or for the perversion or obstruction of justice, or the due administration of the laws—they shall be deemed guilty of a misdemeanor. (2 *R. S.* 691, *Sec.* 8.)

And, under this act it has been determined, that where there is a conspiracy to suppress evidence, and the conspirators apply to the party for that purpose, and persuade him, such acts are overt, whether they succeed or not. (*People* vs. *Chase*, 16 *Barb.* 495.)

To my mind, the conduct of the respondent in this connection was wholly unjustifiable. His best excuse is that he sought to "betray" and ruin his client Richardson, in order to aid his "friend" Haddock. This is not left to inference, but is acknowledged under oath by the respondent.

The question to be determined by the Senate, is substantially whether it shall be adjudged as a precedent that our judges may be guilty of indictable offenses, subjecting them to trial and imprisonment in the county jail, and yet proceed and administer justice themselves? Whether a judge can be guilty of fraud and betrayal of the rights of his client, and adjudge as to the rights of others? Whether he can conspire to suppress the evidence of guilt, and yet try the felon? Whether he can be the go-between of criminals and the accessory, before and after the fact, to their crimes, and yet be allowed to hold and retain his office of judge?

I cannot give an affirmative answer to these questions.

The courts are established to adjudicate upon the rights and duties of the people—to sustain and enforce the laws. They exercise one of the highest attributes of God, and justice is beautifully said to have its origin in His bosom.

The administration of the laws requires that the judge shall possess the most perfect integrity, and the moment that the people cease to feel that the courts are possessed of this essential qualification, they will of course cease to have confidence in their judgments. Would the people be likely to believe that the laws were fairly and faithfully administered, where the judge spends a good portion of his time in the exercise of extortion, in conspiracy to defeat the ends of public justice by the suppression of evidence, in the bribery of a public officer, in the betrayal of a client, in consorting between two bounty broking thieves to fill the armies of the Union with the "scum of the earth," in enabling deserters to escape from military service, in violating the general regulations of the goverment as to recruits, and in turning the aid of his official station to the benefit of himself and his partner, at the expense of the true interest of the people, and in plain violation of the laws of the land?

If there was ever a time when faithfulness and unfaltering courage was the plain duty of all in official station, that time is now.

> "The land wants such
> As dare with vigor execute the laws.
> Her festered members must be laneed and tented;
> He's a bad surgeon that for pity spares
> The part corrupted till the gangrene spread,
> And all the body perish; he that's *merciful*
> Unto the *bad*, is *cruel* to the *good*."

The case is not one proper for the exercise of mercy on the part of the Senate. The guilt of the respondent is palpable, and the offense is one connected with the administration of justice, and if left unpunished saps the vitals of the State.

In order to guard against the perversion of judgment to the injury of the people, the fundamental law has provided for the removal of all the judges, not only by the slow process of an impeachment, but also by the summary action of both Houses in the case of a Justice of the Supreme Court, and by that of the Senate alone in case of a county judge. The intention that this action should be summary is clear—because it is given in addition to this remedy by impeachment—which was well known to be tedious.

In the case of a county judge, the constitution only requires

that notice shall be given to him, and he have an opportunity to be heard. This notice has been given and the opportunity had, and the charges have been fully sustained, and to my mind justify removal.

It is not necessary that any crime should be proved in order to remove a judge. If he is shown to be imbecile from age, infirmity, illness or otherwise, or is permanently insane, or so shamefully immoral that his influence and example tend to degrade the administration of justice, I think he may be removed.

In the case of this respondent, however, in addition to offenses degrading to the ermine of a judge, he has also been guilty of actual crime, and clearly ought to be removed.

I shall therefore vote that he be removed from the office of county judge of the county of Oneida.

STATE OF NEW YORK: }
IN SENATE, *Feb.* 14, 1866. }

COMMUNICATION

FROM THE GOVERNOR TRANSMITTING CHARGES AND SPECIFICATIONS IN RELATION TO THE OFFICIAL MISCONDUCT OF GEORGE W. SMITH, COUNTY JUDGE OF ONEIDA COUNTY.

STATE OF NEW YORK:

EXECUTIVE DEPARTMENT, }
ALBANY, *Feb.* 14*th*, 1866. }

To the Senate:

I respectfully transmit herewith charges and specifications presented to me, alleging official misconduct on the part of George W. Smith, county judge of Oneida county, with petitions accompanying the same, and I recommend that inquiry as to the truth of the charges be immediately made in accordance with the provisions of section eleven, article six, of the Constitution.

This section does not clearly define the details of procedure prior to final action upon the question of the removal of judicial officers, and there are no precedents within my knowledge to guide the action of the Senate in this instance. I have presumed, however, to refer the entire case for your consideration, without any preliminary examination on my part, with a view of forming correct conclusions as to the guilt of the party charged with malversation in office, or learning his defense, believing that this proceeding is wholly within your jurisdiction.

In my judgment this section of the Constitution, by reasonable construction, invests the Governor with the duty of making a recommendation based upon an *ex parte* presentation of the case, and this course would seem essential to confer jurisdiction upon your body.

I do, therefore, recommend that the said George W. Smith be removed from his said office, if in the judgment of the Senate he shall, upon a full and fair investigation, be convicted of the charges made against him.

R. E. FENTON.

To his Excellency REUBEN E. FENTON,

Governor of the State of New York:

The undersigned would respectfully call the attention of your Excellency to the following charges and specifications which are now made against Geo. W. Smith, county judge of Oneida county:

1. That said George W. Smith, while county judge of Oneida county as aforesaid, has been guilty of conduct in his official capacity, which has injured the interests of the public and brought his said office and the court over which he presides into discredit and contempt.

2. That he has, while such county judge as aforesaid, been guilty in his private capacity of grave offenses against the laws he is called to administer, and against the proprieties and dignities of his official position.

3. That he has used the powers vested in him as such county judge, for the individual benefit of himself and friends, to the detriment of the public interest, and in disregard of his duty as a public officer, and in defiance of the decencies and proprieties of life, and of a proper respect for the dignity, purity, and integrity of the office he fills.

4. That he has lent himself, his time and services, his personal and official influence to bounty brokers, assisting them in their schemes to defraud recruits of their bounty, the General Government of recruits, and towns and counties of this State, of the men and credits to which they were entitled, and for which they had burdened themselves with debt.

5. That he has used his personal and official influence and position, to procure from officers of the General Government having charge of the recruiting departments, special favors and privileges for bounty brokers, for his and their joint benefit and advantage.

6. That he has aided and assisted officers of the General Government in said department, suspected and accused of unfair and dishonest practices, in their endeavors to conceal and destroy the evidence of their guilt.

7. That he has tampered with officers of the General Government, offering them bribes for special and official favors, and as a reward for corruption, on behalf of, and for the benefit of bounty brokers.

8. That he has used his official power and authority as county judge for his own pecuniary benefit and advantage.

9. That he has released upon worthless bail prisoners confined

in jail upon criminal charges, procuring them to be mustered into the service of the United States, upon the understanding and arrangement that their bounty should be retained by said Smith, or by said Smith and his law partner, for his and their own use and benefit.

10. That he has neglected the duties of his office, and has engaged in the business of bounty brokerage on his own account, and as agent for other parties.

11. That he has examined and decided claims for exemption for liability and draft under the State militia law, upon papers prepared and presented by his law partner, and has divided with him the attorney's fees received for such services.

12. That he has in other cases of claims for such exemptions, prepared the papers and received therefor pay for his services as attorney, and as judge examined and decided the claims so presented by himself.

13. That he has exercised his power and authority in the appointment of excise commissioners for Oneida county for his own pecuniary benefit and advantage.

14. That he has procured himself to be appointed prosecuting attorney for the said commissioners of excise, knowing that said office would require the trial of appeals and the prosecution of indictments in the court of which he was presiding judge.

15. That he has sold the said office of prosecuting attorney for the excise commissioners to another, and has required and received therefor the sum of $500.

16. That he has made the appointments of commissioners of excise with the view and upon the understanding that he should designate such prosecuting attorney, and control said office for his own benefit and advantage.

17. That he has offered the said office of prosecuting attorney, to other attorneys, upon the condition that they should divide with him the profits and emoluments thereof.

18. That he has habitually neglected the performance of his official duties, and has absented himself from his office for days and weeks together upon private business, disregarding appointments made by himself in the line of his official duties, and neglecting to decide and dispose of cases submitted to him, within a reasonable time, whereby his said office and the court over which he presides has been brought into disrepute and contempt, and the interests of suitors and of the public greatly prejudiced.

19. That in and during the months of January, February and March, 1865, said Smith, at the request and on behalf of one Aaron Richardson, a bounty broker, and for a reward agreed to be paid to said Smith by said Richardson, applied to Major John A. Haddock, then Assistant Provost Marshal General of the western division of the State of New York, to have special favors granted to said Richardson, to-wit: that said Richardson's clerk should be permitted to fill up enlistment papers outside of the Provost Marshal's office at Utica, and also that a less portion of the bounties should be sent forward with the men furnished by said Richardson than was received by the regulations; that on or about the 6th day of March, 1865, said Smith was the bearer of a bribe, viz: the sum of $5000 from Aaron Richardson to said Major John A. Haddock, and sought to obtain from said Haddock, by means thereof, an order that certain bonds, then in the hands of the Provost Marshal of the Twenty-first Congressional District, amounting to $20,000, should be delivered up to said Aaron Richardson.

20. That by the request and on behalf of said Major John A. Haddock said Smith applied to said Richardson give up certain papers showing said Haddock's connection with dishonest and unlawful proceedings, which said papers were, or were claimed to be, in said Richardson's possession; that said Smith, by threats of obstacles to his business, and by intimations of special favors and money rewards, endeavored to persuade said Richardson to give up said papers for the purpose of concealing said Haddock's complicity as aforesaid.

21. That on or about the 5th day of January, 1865, one Charles E. Norton was confined in the jail in Oneida county upon a charge of grand larceny; that said Smith applied to said Major Haddock for a special order that said Norton should be mustered into the service of the United States, and that his bounty should be retained by Henry T. Utley, of Utica, said Smith's law partner; that upon the receipt of such order, said Smith held said Norton to bail upon the bond of said Henry T. Utley, law partner of said Smith, and said Norton was mustered into the service and his bounty of $600 received by said Utley; that said bail bond was never filed in the clerk's office, and never delivered to the district attorney of Oneida county.

22. That said Smith, as county judge, being authorized by law to decide upon claims for exemption from enrollment and draft

under the State militia law, did himself prepare the papers for such claim, and examined and decided as judge upon the papers so prepared by himself, and did receive fees as attorney for the preparation of such papers.

23. That said Smith being authorized as county judge to decide upon such claims for exemption, did allow his law partner, Henry T. Utley, to prepare the papers for such claims, and present said papers to said Smith for his decision thereon, and said Smith did so decide on such claims upon the papers so prepared and presented by said Utley, his law partner; that said Utley received fees for his services, and said Smith shared with said Utley the attorney's fees and profits required and received by him for such services.

24. That said Smith, while county judge, has neglected the duties of his office, and failed to perform the same, and instead thereof, has engaged in the business of bounty broking at Watertown and other places on his own account, and as agent for other parties; in that he has made contracts for the enlistment of recruits for a certain price, with the view and intention of procuring men to enlist at lower prices, and taking the balance of the price paid for his own use and benefit.

25. That said Smith having by law a controlling voice in the appointment of excise commissioners of Oneida county, procured the appointment of Aaron W. Reynolds, George F. Weaver and Samuel P. Lewis as such commissioners; that he induced said commissioners to sign a paper appointing him, said Smith, the prosecuting attorney of said commissioners, in the place and stead of Samuel J. Barrows, then such attorney, well knowing that said office would require the trial of appeals and prosecution of indictments in the court of which he was judge; that said office was worth the sum of $1,000 a year; that the said appointment was kept secret by said Smith.

26. That said Smith, while such judge, and while holding the appointment of such prosecuting attorney, was offered $500 by said Samuel J. Barrows if he would cancel and destroy his said appointment of attorney to the board of excise, and allow him, said Barrows, to retain his position as such attorney, which offer said Smith accepted, received the $500 therefor, gave up his own appointment, and said Barrows thereafter continued to act as such attorney.

27. That said Smith, while such county judge, offered the

appointment of prosecuting attorney of the excise commissioners to one James G. French, upon the condition that said French, if so appointed, should divide the profits of said office with said Smith, which offer was not accepted.

28. That on the 19th day of December, 1865, said Smith, upon the application of one Grove W. Bragg, attorney at law, issued an order and summons in pursuance of the statutes of this State, requiring one Horace D. Kellogg, a party in an action in the Supreme Court, to appear and attend before him at his office in Utica, on the 29th day of December, 1865, at 11 o'clock A. M., to be examined as a witness, which said summons and order were duly served on said Kellogg; that on the day of the return of said summons, viz., on the 29th of December, 1865, at the appointed time and place, the said witness and said moving party appeared in person and by their counsel; but said Judge Smith utterly failed and neglected to attend or appear at his said office, or in the said city of Utica; that by consent of the parties the examination was thereupon adjourned to January 4th, 1866 at the same place and time of day, of which adjournment said Judge Smith was duly notified; but on said 4th day of January said Smith again failed and neglected to appear at his office to attend to said examination, and was absent from the city of Utica; that on the 19th day of January, 1866, another like summons and order were issued by said Smith upon the application of the same party and for the examination of the same witness, which summons was returnable before Judge Smith, at his office in Utica, January 27th, 1866, at 10 o'clock A. M., on which said last mentioned day the parties again appeared in person and by their counsel to attend said examination, but the said judge again failed and neglected to appear at the appointed time and place, and was absent from the city of Utica upon his private business; and for proof of the above charges referrence is made to the annexed affidavits and documents which are made a part and parcel of these charges.

P. B. CRANDALL.

STATE OF NEW YORK, }
County of Oneida. } *ss.*

Peter B. Crandall, being duly sworn, deposes and says, that he has heard read the above charges and specifications, and knows the contents thereof, and that he believes the same to be true in substance and matter of fact, and that he is a resident of the county of Oneida. And deponent further saith, that during the months

of January and February, 1865, he was Provost Marshal of the Twenty-first Congressional District of this State, having his headquarters at Utica. That Major John A. Haddock was at the same time, and before and after, the Assistant Provost Marshal General for the western division of the State of New York, having his headquarters at Elmira; that deponent is personally acquainted with said Haddock, with Judge Smith, John D. Collins, Henry T. Utley and Aaron Richardson; that deponent was subpœnaed as a witness and attended as such upon the trial by court martial of Major John A. Haddock at Elmira and at Syracuse, in the months of May, July and August, 1865; that on said trial, said George W. Smith, John D. Collins and Aaron Richardson, among others, were sworn and gave testimony; that deponent was present and heard, as he believes, all the testimony given by said Smith on said trial, so far as it relates to the charges and specifications above set forth; that the testimony taken upon said trial was at the time reported for and published in the newspapers of this county and elsewhere, and deponent believes that said testimony as given by the witnesses on the said trial and the proceedings on said trial, were in substance and effect truly and correctly reported and published, according to deponent's best recollection and belief; that annexed hereto and marked A are the charges and specifications upon which said Major Haddock was tried; that annexed hereto and marked respectively B, C and D, is the testimony of Aaron Richardson, John D. Collins and Judge Smith, as so reported and published; that upon such trial the said Major Haddock was found guilty of the offenses charged in the twenty-sixth specification, viz.: of combining and confederating with said George W. Smith and others for the purposes therein mentioned. A copy of the findings of said court, as so reported and published, is hereto annexed and marked E.

Subscribed and sworn to before me this second day of February, 1866. } P. B. CRANDALL.

{ U. S. 5 cents. R. S. } H. D. ALEXANDER, *Notary Public, City of Utica.*

ONEIDA COUNTY, *ss:*

Daniel Waterman, Jr., of Utica, in said county, being duly sworn, deposes and says that he has heard read the annexed charge made against Judge Smith, marked "28;" that he was the attorney and counsel of Horace D. Kellogg, the party and witness mentioned therein; that he knows George W. Bagg, the party making

the application and obtaining the several orders in said charge mentioned; that said Kellogg resides in Bridgewater, about sixteen miles from Utica, and said Bagg, at Cassville, about twelve miles from Utica; that on the 29th day of December, 1865, on the 4th day of January, 1866, and on the 27th of January, 1866, deponent saw said Kellogg and said Bagg at the city of Utica, and that they attended at the office of Judge Smith for the purpose of the examination mentioned in said charge, at the time of day when said examination was to take place; that deponent himself, on each of said days, went to said Judge Smith's office, at the appointed hour, and afterwards, and on neither of said days could deponent learn that Judge Smith was in the city of Utica, or that he had been, or was expected at his office; that said examination was given up and was never had, on account of the failure and neglect of said judge to keep his appointments, and for no other reason, as deponent verily believes; that at neither of the times aforesaid was there in session a term of the county court or court of sessions in or for Oneida county, or other business of a public or official character, requiring the attendance of the said judge elsewhere, to the best of deponent's knowledge and belief.

DANIEL WATERMAN, Jr.

Sworn before me this second day of February, 1866.

H. D. Alexander, *Notary Public, Utica, N. Y.*

U. S. 5 cents. R. S.

A.

Charges and Specifications Against Major John A. Haddock.

Charges against Major John A. Haddock, Twelfth Regiment Veteran Reserve Corps, Acting Assistant Provost Marshal General, Western Division of New York:

Charge first.—Violation of the Ninety-ninth Article of War.

Specification first.—In this, that the said Major John A. Haddock, Twelfth Regiment, V. R. C., A. A. P. M. G., W. D. N. Y., while acting as such officer and Provost Marshal General, accepted and received as a present and bribe to influence his official action, a valuable horse, harness, sleigh and robes. Said present and bribe was received from one Aaron Richardson, of Albany, who was at the time, as the said Major John A. Haddock well knew, a substitute and recruit broker, carrying on his business in the said Western Division of New York.

This at or near Canandaigua, in the State of New York, on or about the twenty-first day of January, A. D., 1865.

Specification second.—In this, that the said Major John A. Haddock, Twelfth Regiment, V. R. C., A. A. P. M. G., W. D. N. Y., in complicity with Aaron Richardson, named in the last specification, and with a view improperly to aid and assist said Richardson in carrying on the business of making money by furnishing men and procuring them to be mustered into the military service, and credits to be given on quotas in said Western Division, and in violation of his duty and the laws of the United States, and the rules and regulations of the Government and army of the United States, wrote, for the purpose of being delivered to Lieut. Col. D. C. Poole, then Acting Provost Marshal of the Twenty-first District of New York, the following communication and order, to wit:

HEADQUARTERS A. A. PROVOST MARSHAL GEN. AND
SUPERINTENDENT OF VOLUNTEER RECRUITING SERVICE,
WESTERN DIVISION STATE OF N. Y., ELMIRA, *Jan.* 9, 1865.

Lt. Col. D. W. C. POOLE, *Acting Provost Marshal, Utica N. Y.:*

Colonel—I have the honor to inform you that I have acquaintance with Mr. J. D. Collins, of Utica, and know him to be a fine clerk. You will, unless good reasons are apparent to the contrary, treat enlistment papers made out under his direction and in his office, during the hurry of recruiting, as though made out by one of your recruiting clerks—taking care, however, to see that such papers are made out in conformity to law and regulations.

Very respectfully, your obedient servant,

(Signed) JOHN A. HADDOCK
Major and A. A. P. M. G.

which communication was false in fact, in this, that the said Collins therein named was the clerk and agent of said Richardson, and the said Major John A. Haddock had never seen said Collins, so as to know him, and had no acquaintance with him; and which communication was privily dispatched by the said Major John A. Haddock to the said Richardson by persons employed for that purpose.

This at or near Elmira, N. Y., on or about the 9th of January, 1865.

Specification Third.—In this, that the said Major John A. Haddock, Twelfth regiment V. R. C., A. A. P. M. G., W. D. N. Y., in the same complicity, and with the same view and intent, and with the same wrong as alleged in the last specification, wrote for the

purpose of being delivered to Lieut. Col. D. C. Poole, Acting Provost Marshal of the Twenty-first District of New York, the following communication or order to wit:

HEADQUARTERS A. A. PROVOST MARSHAL GEN. AND SUPERINTENDENT OF VOLUNTEER RECRUITING SERVICE, WESTERN DIVISION STATE OF N. Y. ELMIRA, *Jan.* 10, 1865.

Lieut. Col. POOLE, *Acting Provost Marshal, Utica, N. Y.:*

Colonel—The true construction of Order No. 23, Department of the East, dated March 25, 1864, and promulgated from this office with an intimation that the spirit of that order would govern one in passing upon cases arising in this division, will be held by me to be that if recruits or substitutes are fully informed by the Provost Marshal of their rights as to local and Government bounties, they may thereafter assign to any person such portion of their local bounty as they may elect, not exceeding five-eighths thereof. The Provost Marshal should take pains to inquire fully into bargains made with recruits and substitutes, and hold both parties to a strict performance of their agreements, not forgetting that recruiting agents have rights that should be respected as well as recruits or substitutes.

I am, Colonel, very respectfully, your obd't serv't

(Signed) JOHN A. HADDOCK,

Major and A. A. P. M. G. West Div. New York.

which communication was privily despatched by the said Major John A. Haddock to the said Richardson by persons employed for that purpose.

This, at or near Elmira, N. Y., on or about the 10th of January, 1865.

Specification Fourth.—In this, that the said Major John A. Haddock, Twelfth regiment V. R. C., and A. A. P. M. G., W. D. N. Y., while acting as such Provost Marshal General, received and accepted as a present and a bribe, to influence his official action, two thousand dollars in money from one Aaron Richardson, of Albany, in the State of New York, said Richardson then being, as the said John A. Haddock well knew, a broker of substitutes and recruits, and being engaged in furnishing substitutes and recruits, and procuring them to enlist and be mustered in, and credits to be given in the said Western Division of New York.

This at Elmira, in the State of New York, on or about the 25th of January, A. D. 1865.

Specification Fifth.—In this, that the said Major John A. Had-

dock, Twelfth regiment V. R. C., and A. A. P. M. G., W. D. N. Y., in complicity with the said Richardson, named in the last specification, and for the purpose of improperly assisting said Richardson to carry on the business of making money by filling quotas and obtaining credits in the Western Division of New York, and in violation of his duty, wrote and delivered to the said Richardson, to be used by him, the following letter or communication, to wit:

ELMIRA, N. Y., *January* 30, 1865.

Captain CRANDALL, *Provost Marshal, Utica, N. Y.:*

Captain—From my acquaintance with Mr. Aaron Richardson, of Albany, I am well convinced that he is a man of integrity, and that he will do as he agrees. Such men *are very valuable in putting in men*, as his acquaintance is very extensive, and his resources many. I hope you will grant him every reasonable indulgence. He is a man of property and can back up his statements.

Very respectfully, your obedient servant,

(Signed) JOHN A. HADDOCK,

Major and A. A. P. M. G.

This at Elmira, New York, on or about the 30th of January, 1865.

Specification Sixth.—In this, that the said Major John A. Haddock, Twelfth regiment V. R. C., and A. A. P. M. G., W. D. N. Y., in the same complicity and for the same purpose, and in the same wrong as in the last foregoing specification stated, wrote and signed officially, and delivered to said Richardson, to be used by him to advance his private and pecuniary interest as a broker of quotas and credits, thirteen other several letters addressed, each one respectively, to a Provost Marshal of a Congressional District in the said Western Division of New York, which letters all suggested and requested that facilities and indulgence should be extended by the person addressed to said Richardson in his business as a broker, but the tenor of which cannot be minutely given, for the reason that the said letters, most or all of them, have been by the said Major John A. Haddock demanded and recovered into his possession, and kept or destroyed.

This at Elmira, on or about the 30th of January, A. D. 1865.

Specification Seventh.—In this, that the said Major John A. Haddock, Twelfth regiment V. R. C., and A. A. P. M. G., W. D. N. Y., with intent to aid the said Aaron Richardson in procuring the acceptance and muster, in violation of law and the regulations

controlling enlistments, of men whom he presented to the Provost Marshal of the Twenty-first District of the State of New York, and to assist said Richardson in his business as a bounty broker, and to cause and induce Capt. P. B. Crandall, the Provost Marshal of the said Twenty-first District, to surrender and relinquish to said Richardson a large amount of bonds which had hitherto been deposited by said Richardson with said Provost Marshal as security against the desertion of certain men theretofore presented by said Richardson for muster, which men had been mustered in and had deserted, did write and deliver or send to said Richardson, to be used by him, a certain letter, whereof the following is a copy :

HEADQUARTERS, &c., ELMIRA, N. Y.,
February 6th, 1865.

Captain CRANDALL, *Provost Marshal, Utica, N. Y.* :

Captain—I shall very soon forward to you six to eight more men to act as guard. In case the sergeant whom I shall forward with the men does not prove to be a perfectly reliable man, you will not fail to report the fact to me, to the end that the man may be changed. You will use every effort in your power to guard against desertion. I wish you to understand distinctly, that when a man is enlisted and mustered, the credit for that man is due to the locality for which he is enlisted. I shall in no case order a credit to be revoked, unless it shall appear that the local bounty committee were parties to a positive fraud.

For that reason you will use every precaution to get your men delivered at the rendezvous after muster. As regards the seventeen men delivered here, with only fifty dollars each in their possession, much complaint was made by the commandant of the rendezvous camp. If the men, however, agreed to go for fifty dollars each, there can be no just cause of complaint. It would be much better for the service if men would volunteer to go *for no money* at all, but influenced by patriotic motives.

Very respectfully, your obedient servant,
(Signed) JOHN A. HADDOCK,
Major, &c., &c.

This at Elmira, N. Y., on or about February 6, 1865.

Specification Eighth.—In this, that the said Major John A. Haddock, Twelfth regiment V. R. C., and A. A. P. M. G., W. D. N. Y., in violation of duty, and of the rules and regulations by which he was governed, and in complicity with said Aaron Richardson, and with the intent to enable said Richardson to receive

large portions of the bounties, of right belonging to volunteers into the military service, did authorize, suggest to and direct Capt. P. B. Crandall, the Provost Marshal of 21st District of New York, to muster men and send them forward, without five-eighths, or three-eights, or any part whatever of the local bounty of such men being paid to them, or sent forward with them, or in any manner retained for them, or for the United States.

This at Elmira, N. Y., on or about the 5th day of February, A. D. 1865.

Specification Ninth.—In this, that the said Major John A. Haddock, Twelfth regiment V. R. C., and A. A. P. M. G., W. D. N. Y., in violation of his duty, and of the rules and regulations obligatory upon him as an officer, and with intent to enable bounty-brokers, one of whom was an employee of said Major John A. Haddock, to possess themselves of the bounties belonging to volunteers into the military service, ordered and encouraged different Provost Marshals in the Western Division of New York, and especially Capt. Wright, Provost Marshal of the Twenty-Seventh Congressional District, to muster men into the military service without their receiving the local bounty to which they were entitled, and without said bounty, in the amount to which they were entitled, being retained for them or sent forward with them, and irregularly to muster substitutes in the absence of their principals, for sub-districts not within the district of the Provost Marshal so mustering them.

This at Elmira, N. Y., on or about the 1st of February, A. D., 1865.

Specification Tenth.—In this, that the said Major John A. Haddock, Twelfth regiment, V. R. C., and A. A. P. M. G., W. D. N. Y., agreed to furnish, and did furnish, privately to recruit and credit brokers, and especially to one Aaron Richardson, in advance of the public or the local authorities being apprised or having knowledge thereof, statements of the apportionment of quotas, and of the arrangement and allowance of credits in the various districts and sub-districts in the Western Division of New York, for the purpose and with the intent of enabling said brokers, and especially said Richardson, to secure and obtain from local authorities, who were ignorant of the quotas and of the State credits, the contract to fill quotas and supposed quotas, and to obtain for so doing gross sums based upon exaggerated and mistaken estimates and expectations of the number of men required.

This at Elmira, N. Y., on or about the 1st of February, A. D., 1865.

Specification Eleventh.—In this, that the said Major John A. Haddock, Twelfth regiment V. R. C., and A. A. P. M. G., W. D. N. Y., agreed with Aaron Richardson, a broker of credits and recruits, to keep back, and did keep back from the public and from the local authority of the Twenty-first District of New York, and from the Provost Marshal of said district, the quota of said district and of the sub-districts thereof, under the then pending call for troops, and the true state of the credits due to said districts and sub-districts; and, also, the deduction of a certain percentage upon the apparent quota, to which percentage said district was entitled; and also agreed with said Richardson to apprise him, and did apprise him, privately and in advance, of said quotas and credits; and also agreed with said Richardson to overstate, and did knowingly overstate to the Provost marshal of said Twenty-first District the quota of said district, all to the end and with the intent that said Richardson might secure contracts to fill quotas based upon exaggerated estimates of the number of men to be furnished, and he, the said Major Haddock, agreed with said Richardson for, and required of said Richardson, a certain proportion of the profits made from the transaction.

This at Elmira, N. Y., on or about the fifteenth day of January, A. D., 1865.

Specification Twelfth.—In this, that the said Major John A. Haddock, Twelfth Regiment, V. R. C., and A. A. P. M. G., W. D. N. Y., did exact and agree to accept from one Aaron Richardson, who was, as the said Major Haddock well knew, a broker of credits, substitutes and recruits, doing business in the Western Division of New York, five thousand dollars in money as a bribe and present to the said Major Haddock for acts done and to be done by him officially, in aid of said Richardson, in his business aforesaid.

This, on or about the 10th of March, A. D. 1865, at Rochester, N. Y.

Specification Thirteenth.—In this, that the said Major John A. Haddock, Twelfth Regiment V. R. C., and A. A. P. M. G., W. D. N. Y., made appointments with persons engaged in the Western Division, N. Y., as brokers of credits and bounties, and among others with the said Aaron Richardson, and with one Fiske, of the city of New York, to meet them privately, at long distances from the headquarters of said Major Haddock, to wit: at Rochester, N. Y., at Rome, N. Y., at Syracuse, N. Y., at Canandaigua, N. Y.,

and elsewhere, and did meet them pursuant to said appointments for the purpose of aiding them in the said business of credits and quota brokerage, and of sharing their profits with them.

This at Elmira, N. Y., on or about the fifteenth day of February, A. D. 1865.

Specification Fourteenth.—In this, that the said Major John A. Haddock, Twelfth Regiment V. R. C., and A. A. P. M. G., W. D. N. Y., did, in violation of his duty and of the regulations by which he was bound, order Capt. P. B. Crandall, Provost Marshal of the Twenty-first District of New York, to muster in men for sub-districts not within said Twenty-first District, and also for sub-districts not within said western division of New York.

This, at Elmira, N. Y., on or about the 25th day of February, A. D. 1865.

Specification Fifteenth.—In this, that the said Major John A. Haddock, Twelfth regiment V. R. C., and A. A P. M. G., W. D. N. Y., did enter upon his books credits as due to a certain sub-district in the Twenty-first district of New York, on the call for 300,000 men, being the last call of the President for troops, when in truth, as the said Major Haddock knew, the men thus credited had never enlisted for any sub-district in said Twenty-First District, nor for said Twenty-First District at large, and when in truth some of the men so credited had never enlisted under the said call for troops, or so late as to apply on said call, as said Major Haddock knew, which acts and doings of the said Major Haddock were with intent improperly, to aid one E. D. Fiske, a bounty broker, and to enable him to receive large profits for negotiating and disposing of said credits.

This, at Elmira, N. Y., on or about the tenth day of February, A. D. 1865.

Specification Sixteenth.—In this, that the said Major John A. Haddock, Twelfth regiment V. R. C., and A. A. P. M. G., W. D. N. Y., did corruptly agree with certain bounty brokers, and among others with Aaron Richardson, to grant favors and give aid officially to said brokers, in their business and schemes respectively, and especially to said Richardson, for a consideration to be paid to him for so doing, and also that he agreed to furnish timely information of quotas and credits; to cause credits after men were mustered in to be withheld, to the end that large profits might be realized and larger bounties to be obtained by said brokers, and

said Richardson; to grant special facilities and give special orders and directions to Provost Marshals for the purpose of assisting and abetting the operations of said brokers and of said Richardson, and to protect said brokers and said Richardson, and stand between them and the Government of the United States.

This, at Elmira, N. Y., on or about the first day of January, A. D. 1865.

Specification Seventeenth.—In this, that the said Major John A. Haddock, Twelfth regiment V. R. C. and A. A. P. M. G., W. D. N. Y., did corruptly agree with Aaron Richardson, of Albany, a broker of credits and recruits, to aid him in his business in the western division of New York, and to share and participate in the profits of said business.

This, at Elmira, New York, and also at Canandaigua, N. Y. and also at Rochester, N. Y., on or about the first day of January, A. D. 1865.

Specification Eighteenth.—In this, that the said Major John A. Haddock, Twelfth regiment, V. R. C. and A. A. P. M. G., W. D. N. Y., did corruptly agree with certain bounty brokers, and among others with one Fiske, a bounty broker residing in the city of New York, to aid him in his business in the western division of New York, and to participate and share in the profits of said business, or to profit pecuniarily thereby.

This, at Elmira, N. Y., and also at Rome, N. Y., and also elsewhere, in said western division of New York, on or about the first day of February, 1865.

Specification Nineteenth.—In this, that the said Major John A. Haddock, Twelfth regiment V. R. C. and A. A. P. M. G., W. Div., N. Y., did request and propose to Aaron Richardson, a recruit and credit broker, to send to him, Major Haddock, money and presents, and did direct said Richardson to send the same through one Carter, a female whom he named, in order to guard against suspicion,

This at Elmira, New York, on or about the first day of January, A. D. 1865.

Specification Twentieth.—In this, that said Major John A. Haddock, Twelfth regiment V. R. C. and A. A. P. M. G., W. Div., N. Y., took into the pretended employment of the United States, and placed or caused to be placed upon the pay roll, and paid certain persons, to wit, one Mrs. Carter and one Morey when in truth said persons were improperly and unnecessarily employed, and were not employed in good faith to render service to the United States, but were employed and paid out of the public moneys, by said

Major Haddock, for his own personal uses, and were in collusion with him, and he with them, in the receipt of unlawful gains, made out of assistance furnished by said Major Haddock, officially, in the business of putting in men to apply on quotas, and managing and obtaining credits.

This, at or near Elmira, New York, on or about the first day of January, A. D. 1865.

Specification Twenty-first.—In this, that the said Major John A. Haddock, Twelfth regiment V. R. C., and A. A. P. M. G., W. Division, New York, did keep in the pretended employment of the United States, and on the pay roll, and did pay out of the public money, certain females, to wit, one Carter and one ———, when in truth said females rendered no service to the United States, but were kept by said Major John A. Haddock for purposes of prostitution.

This, at Elmira, N. Y., on or about January 15th, 1865.

Specification Twenty-second.—In this, that the said Major John A. Haddock, Twelfth regiment V. R. C., and A. A. P. M. G., W. Division, New York, did on or about the 14th of March, 1865, in violation of his duty, write and send to Captain A. L. Scott, Provost Marshal of the Twenty-second District of New York, the following letter, viz.:

HEADQUARTERS A. A. PROVOST MARSHAL GEN'L AND
SUPT. VOL. RECRUITING SERVICE WEST DIV. N. Y.,
ELMIRA, N. Y., *March* 14, 1865.

Capt. A. L. SCOTT, *Provost Marshal,*
Twenty-Second District, Oswego, N. Y.:

Captain—The bearer is William Barnes, a relation of mine, and resident of the town of Mexico, N. Y.

I desire you to give him an appointment as special agent at your headquarters. He will bring this line to you, and is ready to enter upon the discharge of his duties.

Please forward his name at once for approval, and oblige

Your friend and servant,

[Signed] JNO. A. HADDOCK,
Major and A. A. P. M. G.

And on the same day did, in violation of his duty, write and send to the same Capt. A. L. Scott, a letter containing the following:

ELMIRA, N. Y., *March* 14, 1865.

Capt. SCOTT, *Provost Marshal:*—

My Dear Sir— * * * If you have no special agent in that portion of Oswego county where my cousin resides, who not let him work in that vicinity? But caution him against exceeding his authority, and he will not do so if you take pains to instruct him.

Very truly, your friend,

JNO. A. HADDOCK.

Which said two letters were written and sent for the purpose of causing and inducing the said Capt. A. L. Scott, to take into the service of the United States one William Barnes, who was an unfit and improper person for such service, and who was not a loyal man, and who secretly absented and secreted himself during the pendency of calls for troops, in order to shirk his duty as a citizen; all of which was well known to said Major John A. Haddock, when he wrote and sent said letters.

This, at Elmira, in the State of New York.

Specification Twenty-third.—In this, that the said Major John A. Haddock, Twelfth Regiment V. R. C., and A. A. P. M. G., W. Div. N. Y., did, in violation of his duty, exert his official influence to procure the appointment of one Willam Barnes, who was a cousin of said Haddock, and did request the appointment of said Barnes as special agent of the Provost Marshal of the Twenty-eighth District of New York, after said Barnes had, through the influence and action of said Major Haddock, been appointed special agent of Capt. A. L. Scott, Provost Marshal of the Twenty-second District of New York, and been found unworthy and dismissed the service by said Capt. A. L. Scott, as the said Major John A. Haddock well knew at the time of so exerting his influence for, and requesting the appointment of said Barnes, as aforesaid.

This, at Elmira and at Rochester, in the State of New York, on or about the 20th of March, A. D. 1865.

Specification Twenty-fourth.—In this, that the said Major John A. Haddock, Twelfth Regiment V. R. C., and A. A. P. M. G., W. Div. N. Y., in violation of his duty, and in complicity with Aaron Richardson, referred to in preceding specifications, and with intent improperly to aid and assist said Richardson, in the business of securing contracts for filling quotas and obtaining credits, and making gains and profits as a bounty and recruit broker, and intending to secure to said Richardson special facilities in his

schemes and business, did write and deliver to the said Richardson, for the purpose of being shown to Capt. A. L. Scott, Provost Marshal of the Twenty-second District of New York, a certain letter in the words and figures following:

HEADQUARTERS A. A. PROVOST MARSHAL GEN'L AND
SUPT. VOL. RECRUITING SERVICE WEST DIV. N. Y.,
ELMIRA, *January* 7, 1865.

Capt. A. L. SCOTT, *Provost Marshal,*
Twenty-second District N. Y., Oswego, N. Y.:

Captain—This will be handed to you by a friend of mine, Mr. A. Richardson. He is a man of integrity and capacity, and will do as he agrees in all things. Any good you may be able to do him will be thankfully appreciated by

JNO. A. HADDOCK.
Maj. 12th V. R. C., A. A. P. M. Gen'l, W. D. N. Y.

He, the said Major Haddock, well knowing the purpose and business of the said Richardson, and being moved to write said letter by improper and corrupt considerations.

This at Elmira, N. Y., on or about the 7th of January, A. D. 1865.

Specification Twenty-fifth.—In this, that the said Major John A. Haddock, Twelfth regiment V. R. C., and A. A. P. M. G., W. D. N. Y., did instruct Major W. H. H. Beadel, who had heretofore been appointed Acting Assistant Provost Marshal of the 21st District of the State of New York, to advise and consult in regard to his official action and administration as such Acting Provost Marshal of said 21st district, with one Geo. W. Smith, of Utica, N. Y., and to take the advice of said Smith in regard to his action and administration, with a view to bring said Smith and said Major Beadel into communication with each other for the purpose aforesaid, when at the same time the said Smith, as the said Major John A. Haddock well knew, was, and had been in the employ of Aaron Richardson, mentioned in foregoing specifications, in his business as a bounty and credit broker in the Western Division of New York, and when said Smith had been and was, as said Major John A. Haddock well knew, in complicity with said Richardson in obtaining, and privy to his obtaining from and through said Major Haddock's special and illicit facilities and privileges for effecting enlistments, in said Twenty-first District and elsewhere, and in obtaining contracts for filling quotas and procuring credits, and when said Smith, as said Major John A. Haddock well knew, had been and was interested in the business of said Richardson, and

instrumental in carrying it on, and when the said Major John A. Haddock had notice that said business had been and was being wrongfully carried on, and was detrimental to the interest and service of the United States, which instructions were given by the said Haddock, with intent improperly to facilitate the said Richardson and the said Smith in carrying on the business of bounty and credit brokers, to the prejudice of good order and military discipline, and to the injury of the public service.

This at Elmira, New York, on or about the 15th of March, A. D. 1865.

Specification Twenty-sixth—In this, that the said Major John A. Haddock, Twelfth regiment V. R. C., and A. A. P. Marshal General of the Western Division of New York, in violation of his duty as such officer, and of the article of war, and of the other statutes and laws of the United States, did combine, conspire, confederate and collude with one George W. Smith, of the city of Utica, in the State of New York, and with others residing at Utica and elsewhere, to become pecuniarily interested in the business of recruiting in said division, and to cheat and defraud the people and loyal authorities of certain districts in said Western Division, and the recruits mustered in said districts, and the government, and to enter into corrupt complicity with bounty and recruit brokers to make gains and profits out of recruiting in said division, and to obtain and receive pecuniary and valuable inducements for granting special and illicit facilities and opportunities to bounty brokers and those engaged in recruiting and filling quotas, and pursuant to said conspiracy with George W. Smith and others, residing at Utica and elsewhere, did become pecuniarily interested in the business of recruiting in said division, and did, together with said Smith and others, residing at Utica and elsewhere, enter into corrupt complicity with bounty and recruit brokers for the purpose of making unlawful gains out of recruiting and filling quotas in said division, and did receive valuable inducements for granting special illicit opportunities and facilities to bounty and recruit brokers.

This at Elmira, and also at Canandaigua, and also at Utica, and also at Rochester, and elsewhere, in said division, and on divers days between the first day of December, A. D. 1864, and the fifth day of April A. D. 1865.

Charge Second—Violation of the eighty-third article of war, and conduct unbecoming an officer and a gentleman.

Specifications—First, Second, Third, Fourth, Fifth, Sixth, Seventh, Eighth, Ninth, Tenth, Eleventh, Twelfth, Thirteenth, Fourteenth, Fifteenth, Sixteenth, Seventeenth, Eighteenth, Nineteenth, Twentieth, Twenty-first, Twenty-second, Twenty-third, Twenty-fourth, Twenty-fifth, Twenty-sixth, the same as the specifications corresponding to the same numbers respectively as set out under charge first.

Charge Third—Violation of the eighty-fifth article of war and fraud.

Specifications—First, Second, Third, Fourth, Fifth, Sixth, Seventh, Eighth, Ninth, Tenth, Eleventh, Twelfth, Thirteenth, Fourteenth, Fifteenth, Sixteenth, Seventeenth, Eighteenth, Nineteenth, Twentieth, Twenty-first, Twenty-second, Twenty-third, Twenty-fourth, Twenty-fifth, Twenty-sixth, the same as the specifications corresponding to the same number respectively as set down under charge first.

Charge Fourth—Fraud; malfeasance in office; abuse of official powers; complicity with bounty brokers in the Western Division of the State of New York; accepting presents and bribes; agreeing to accept presents and bribes; proposing to accept presents and bribes; being interested pecuniarily in recruiting and filling quotas in the Western Division of the State of New York.

Specifications—First, Second, Third, Fourth, Fifth, Sixth, Seventh, Eighth, Ninth, Tenth, Eleventh, Twelfth, Thirteenth, Fourteenth, Fifteenth, Sixteenth, Seventeenth,. Eighteenth, Nineteenth, Twentieth, Twenty-first, Twenty-second, Twenty-third, Twenty-fourth, Twenty-fifth, Twenty-sixth, the same as the specifications corresponding to the same numbers respectively as set out under charge first.

B.

Testimony of Aaron Richardson.

Aaron Richardson, sworn.—Reside at Albany, for thirty years; engaged last winter largely in furnishing recruits in the Western Division of New York; know Major Haddock. I had John D. Collins in my employ as clerk in the recruiting business. Collins was also in Judge Geo. W. Smith's office. He (Collins) first told me about Haddock; and Judge Smith and James McQuade, of Utica, also told me about Haddock. Had conversation with Judge Smith about Haddock. George W. Smith went to Elmira for me

to see Major Haddock. He went for specific purposes. I went to Elmira the next day after Smith, to see Haddock. Smith had not got there. I told Haddock he had started for Elmira. I told Haddock in part what he (Smith) was come for. I had an interview with Haddock; asked him if he (Haddock) had seen Judge Smith? He said "No!" I told him he had started for Elmira the day before. I told him Smith had come to get some papers from him in regard to the quota. He asked me what it was. I hesitated. He told me I need not be afraid, but to speak out. He said, "I know you—you are Richardson; I have heard of you at Utica and also at Washington; you must not be afraid, but must speak out." He said no one was there to hear us. I told him there was no chance in Utica, the quota was too small. He said there was to be an alteration, and that he had a despatch from General Fry, at Washington, that the quota would be larger. I said there would be a chance if I knew it before it was known in Utica. I said it would be well to telegraph it as large as possible. I said, "Let me know the amount as soon as possible." He said the quota would be from 1,000 to 1,200; he would do what he could to help me if it was all right. He said something about my giving another party a horse. I told him I would give him a horse if he wanted one. He said, "Very well." I told him to meet me at Canandaigua and I would give him a horse. He said, "Telegraph me when to meet you, and I will meet you there." He said he would like to have known what I wanted about the quota sooner. I said he had information that if he would tell me I could make considerable, and it would be a good thing for him as well as me. He said he would meet me anywhere. I got a letter to go to Major Willson's barracks. I got it from Major Haddock.

Aaron Richardson, continued.—The letter to Major Wilson was at another time. I walked up to Major Haddock's house, and spoke about letters of introduction to different provost marshals in this division. I refer to letters I subsequently returned. The letters were to make me acquainted with the provost marshals. He brought them to me at the Brainard House. There were some ten to thirteen, one to each provost marshal except Oswego. I went to Canandaigua some ten days after. I did not say I would send anything but a horse, but I sent other things. I sent a horse, cutter, harness, blankets, &c. I sent it from Albany to Canandaigua. I went to Elmira and told him to come up and get

the horse. He said he could not before the next night. I then got the letter from Major Haddock to Major Wilson, for barracks No. 1. I went to the barracks, and from there to the cars to Canandaigua. Major Haddock came at night, about eleven o'clock, with an orderly. He slept with me in the same bed. I paid the bills, and gave him $50 to pay for the horse, &c., and he returned me some $10 or $15; the orderly took the horse. He said he would send the same instructions to Captain Crandall as he did to Lieutenant Poole. I sent J. D. Collins some time afterwards to see Haddock. I went to Elmira afterwards, about the 30th of January; between eleven and two o'clock at night I went to his residence. He came to the door undressed. I went in. He told me there were over two hundred credits belonging to Oneida county that they did not know about. He would give me private information of the credits for sub-districts, and I could make contracts for the quota without its being known that there were any credits due. He would not let them know about them, but would allow them to me, and I was to give him half of what was made by the operation. The number was from 200 to 210. The bounty then was $600 per man. I assented to it. What we were to make by the operation was 600 times 210. He agreed to send me the credits for each sub-district. I offered him a $1,000 Oneida county bond. He refused it, because it might be traced to him. He said I must give him all that was going to him in money. I was to go to Binghamton, but the train had been taken off, and I remained. I saw Haddock next morning at his office. He gave me a letter of introduction to Capt. P. B. Crandall, and a small scrap of paper with a name on, and told me if I had anything to send to send it to that address, care of him. He said it was his brother's sister. The scrap reads, "Mrs. Clara Carter, care Major Haddock, Elmira," in Haddock's handwriting. He also gave me the credits for sub-districts—the paper here produced, and identified as the one given.

Surplus of sub-districts in the 21st congressional district, as shown by report of quotas and credits, dated December 31st, 1864:

Annsville	9
Augtsta	1
Ava	3
Boonville	24
Bridgewater	9

Camden	2
Deerfield	4
Florence	2
Floyd	1
Kirkland	3
Lee	3
Marshall	5
New Hartford	2
Paris	2
Remsen	4
Rome	12
Steuben	1
Trenton	8
Utica, 1st ward	4
Utica, 3d ward	18
Utica, 4th ward	5
Utica, 5th ward	7
Utica, 6th ward	24
Utica, 7th ward	8
Vernon	1
Western	3
Westmoremand	1
Whitestown	20
	193
Oneida county at large	17
	210
Deficiency	4
	206

The letter to Capt. Crandall was read and offered in evidence:

"ELMIRA, N. Y., *Jan.* 30, 1866.

Captain CRANDALL, *Provost Marshal, Utica, N. Y.:*

Captain—From my acquaintance with Mr. Aaron Richardson, of Albany, I am well convinced that he is a man of integrity, and that he will do as he agrees. Such men *are very valuable in putting in men*, as his acquaintance is very extensive, and his resources many. I hope you will grant him all reasonable indulgences. He is a man of property, and can back up his statements.

Very respectfully, your obedient servant,

(Signed) JOHN A. HADDOCK

Major and A. A. P. M. G."

He told me he would telegraph the quota double the amount, and would give Provost Marshal the figures larger than they really were. Col. Poole was in the office, and he (Haddock) said he was sorry Col. Poole saw me; he would rather given $5,000 than to have Col. Poole see me there.

He told me to telegraph when I wanted to see him. I went to Utica. I received the following despatches from Major Haddock:

ELMIRA, *January* 24, 1865.

AARON RICHARDSON:

She will be there to-morrow. Watch for her.

JNO. A. HADDOCK.

"She" I understand to mean the quota.

ELMIRA, *January* 24, 1865.

AARON RICHARDSON, Bagg's Hotel:

It stands at two thousand and eighty-eight (2,088).

JNO. A. HADDOCK.

The true quota was, in reality, 1,044—just half.

ELMIRA, *January* 25, 1865.

A. RICHARDSON, Bagg's Hotel:

She was sent to you yesterday. Has she come? Do you want another one for the other? I wrote you last night.

JNO A. HADDOCK.

I know that "she" meant the quota.

Witness being shown the following despatch, testified that it was in Major Haddock's handwriting:

ELMIRA, N. Y., *January* 25, 1865.

CHIEF OPERATOR, Elmira:

Will you please ascertain, from Utica office, whether the two messages to A. Richardson, sent by me yesterday, were received by him. I will pay you, if there be any charge.

Respectfully,

JNO. A. HADDOCK,

Major, &c., &c.

I received the following letter from Major Haddock:

ELMIRA, N. Y., *January* 27, 1865.

A. RICHARDSON, Esq., Utica, N. Y.:

Sir—Your letter duly received. The corrected quota of the 21st district is 1,044. This is what was due to the United States on the 31st December, 1864. All enlistments made since that time are to be deducted therefrom. I have notified Col. Poole

of the quota as above. Men can only be credited to sub-districts or districts in my division. Lewis county is *not* in my division. I do not understand what you mean by asking "whether you can contract for the amount of bounty to be paid." If you will make your question plain, I will try to answer it. I would be glad to see you here, if consistent with your other business.

Very respectfully,

JNO. A. HADDOCK.

I went to Rochester on the 10th of March to meet Major Haddock; made an appointment with Judge Geo. W. Smith, of Utica, to meet him; went to Rome previous to this to meet Haddock, by an appointment made by Mr. Collins; didn't meet him; there was a mistake in the train; I thought it was 4 P. M.; he thought it was 4 A. M.; I went to Syracuse and telegraphed him as follows:

JOHN A. HADDOCK, Elmira:

I went to Rome, Friday night, to meet; sent Collins two (2) hours before; was much disappointed in not seeing you; where shall I meet you, and when?

A. RICHARDSON.

Got an answer as follows:

ELMIRA, (forwarded from Syracuse) *March* 1, 1865.

A. RICHARDSON, Bagg's Hotel:

I did not understand why you were not at Rome, nor do I now understand it. I was there four (4) hours on Friday night. You will be obliged to come here, as I am greatly pressed.

J. A. HADDOCK.

I sent J. D. Collins afterwards to see Haddock about the mistake.

I received the following letter. It is in Haddock's handwriting:

February 4, 1865.

Mr. A. RICHARDSON, Bagg's Hotel, Utica, N. Y.:

Sir—When I left you here, it was with the understanding that I should hear further from you relative to the matter we were conversing upon. Thus far I have heard nothing.

Very respectfully, your friend,

(No signature to this.)

Received the following from Haddock by mail, or from Mr. J. D. Collins. It is Major Haddock's writing:

February 6, 1865.

A. RICHARDSON, Esq.:

My Dear Sir—From present appearances it is quite probable that twenty-five per cent. of the quota under present call will never be called for. Consequently, if you have contracts to fill quotas of sub-districts positively made, great benefit will thereby accrue to you. "Joe" shall be attended to. None of the other counties, save Erie, are in the same condition as Oneida, and I do not think you could get a contract at Buffalo.

Respectfully, your friend,
(No signature.)

"None of the counties save Erie, are in the same condition as Oneida," I understand to refer to the surplus of credits which had been kept back from the districts. I sent George W. Smith several times to see Major Haddock at Elmira. I went to Rochester to see Haddock, on the 4th of March; didn't see Haddock; saw George W. Smith and Mr. Hoard, whom I understood afterwards to be in the employ of Haddock; Haddock didn't come; I paid the bills. Smith went from Utica a few days afterwards to see Haddock for me.

A dispatch was sent to Haddock, signed "R & S"—means Richardson and Smith; the dispatch is as follows:

March 10, 1865.

JOHN A. HADDOCK, Elmira:

Meet us at Osborn House, Rochester, to-night, without fail.

R. & S.

Judge Smith and William J. Cowell, of Albany, went with me to Rochester; we went to the Osborn House; I went to the train to meet Haddock, at the Genesee Valley road; missed him; he came by the other road; found him at the hotel when I returned; he went up stairs with me to his room, and told Smith to wait; he complained about my not meeting him at Rome; I told him Collins must have made a mistake, I was there; he said E. D. Fiske waited eight hours to see him, and I might have done as much; Fiske is a bounty broker; I told him Collins had made a mistake in the trains; he said that I had not done as I agreed, and had not met him; He wanted his letters back, and said I had shown them; I told him I had only shown them to Col. James McQuade, and he complained that I had not done as I agreed to; I told him my money was all tied up in bonds, and I was just getting in a

way to make something; he said Collins took out the money I sent in the presence of his clerks, and he didn't like it; I ought to send it by Judge Smith; he told me that hereafter I should send all that I had to send by Judge Smith; I told him that I thought I could raise $5,000 for him, and would send it to him by Judge Smith; he said it would be all right if I would send the letters back to him too; I told him there was a chance outside of the Twenty-first District, but Captain Crandall did not like to muster them without an order from him; he said he would send Capt. Crandall such an order. I had previously put up with Capt. Crandall $20,000 in bonds, as security against the desertion of certain men I had put in under Capt. Crandall; that was after a letter was sent to Capt. Crandall to muster in men without any bounty; he said, when we were at Rochester he would give me an order for my bonds, if I would send the letters back to him; he said he would give me an order for the Provost Marshal at Syracuse to muster in men the same as in Utica; he said he could keep back draft if I could get contracts for towns, and would do so; Smith came to the room at this time; I asked him in Smith's presence if it would be satisfactory to do what I wanted to do, through Smith; he said it would be. I paid the bills at the hotel, and went back to Utica. I was arrested three days after, by order of Major Beadle.

Judge-Advocate reads from Register of Osborn House: Friday, March 10th—John A. Haddock, Room 107, S.; George W. Smith, Room 107, S.; A. Richardson, Albany, 110, S.

Saturday, March 4th, 1865, from said register—George W. Smith, Utica, Room 106; S. Floyd Hoard, Watertown, Room 106; A. Richardson, Albany, Room ——. On the 10th March I left Smith and Richardson in the same room that night. On the 13th March I sent Collins from Utica to Rome by consent of Smith, to telegraph Haddock to order Major Beadle to muster men for Oswego, and the answer is as follows:

ELMIRA, *March* 14, 1865.

GEO. W. SMITH, *County Judge:*

I have given directions as requested by you.

JNO. A. HADDOCK.

I was arrested two days after the despatch was received. Smith telegraphed to Haddock to know if he had me arrested. He answered as follows:

ELMIRA, *March 15th.*

GEO. W. SMITH, Utica: Not by my order.

JNO. A. HADDOCK.

I was released in a couple of days. I sent Collins to Elmira on February 4th to get three men furloughs. The names are, Joseph Smith, James Long and Thomas Nugent. He was also to get an order sent to Captain Crandall that men should be credited to proper localities to which they were enlisted. I told him what I wanted the three men for. I gave Collins a check, to give to Haddock, of $2,000 on Second National Bank of Utica. I had money there, and the check was good. Collins brought back to me the following paper:

HEADQUARTERS, ELMIRA, N. Y., *February* 6, 1865.

Captain CRANDALL, *Provost Marshal*, Utica, N. Y.:

Captain—I shall very soon forward you six to eight more men to act as guard. In case the sergeant whom I shall forward with the men does not prove to be a perfectly reliable man, you will not fail to report the fact to me, to the end that the man may be changed. You will use every effort in your power to guard against desertion. I wish you to understand distinctly, that when a man is enlisted and mustered, the credit for that man is due to the locality for which he enlisted. I shall in no case order a credit to be revoked, unless it shall appear that the local bounty committee were parties to a positive fraud.

For that reason you will use every precaution to get your men delivered at the rendezvous after muster. As regards the seventeen men delivered here, with only fifty dollars each in their possession, much complaint was made by the commandant of the rendezvous camp. If the men, however, agreed to go for fifty dollars each, there can be no just cause of complaint. It would probably be much better for the service if men would volunteer to go *for no money* at all, but influenced by patriotic motives.

Very respectfully, your obedient servant,

(Signed) JOHN A. HADDOCK,

Major, &c., &c.

I understood there was an order that five-eighths of the bounty should be sent forward with the recruit. The bounty was $700 per man then. The seventeen men went with but $50. After this letter but few men went with bounty; most of them went with no bounty. I know of no other order than this. I have

sued Captain Crandall for the bonds. J. D. Collins was to get an order from Haddock for the bonds. Haddock wrote the following:

HEADQUARTERS, &c., ELMIRA, N. Y., *February* 7, 1865.

Captain CRANDALL, *Provost Marshal*, Utica, N. Y.:

Captain—I send you Sergeant Sabin and Corporal Hanlon, both good men. You will place Sergeant Sabin in charge of the guard at your headquarters, as he appears to be a very trusty man. Please notify me of the arrival of these men.

Respectfully, your obedient servant,

JNO. A. HADDOCK,

Major, &c., &c.

I received the following letter from Major Haddock. It is in his hand-writing:

ELMIRA, N. Y., *6th February*, 1865.

Mr. A. RICHARDSON, Utica, N. Y.:

Sir—I have received by the hands of Mr. Collins a package of money from you, said to contain two thousand dollars. As I am ignorant of the use to which you wish the same applied, I beg you will transmit me further instructions relative thereto. I have placed the money on deposit until I hear from you.

Very respectfully, your obedient servant.

JNO. A. HADDOCK.

Major 12th Reg't V. R. C., A. A. P. M. G.

On the 22d I sent Collins to Elmira again to get an order for the bonds. There had been an order from Haddock (A) about my mustering in men. I sent Collins to see if certain men at Utica had anything to do with it. Know G. D. Foster by sight. He brought me a letter from Major Haddock, saying he had furloughed the three men. James McQuade, of Utica, came with him. George D. Foster was a clerk of Major Haddock. I received the following letter. It is, to the best of my knowledge, Major Haddock's writing:

Mr. RICHARDSON:

Your friend at Elmira desires a personal interview with you at as early a day as is convenient, at this place or Canandaigua. He has in his possession certain facts which you should be possessed of.

(No signature or date, but postmarked Elmira, March 17.)

When I first talked with George W. Smith, he (Smith) went to Elmira. He brought back two letters, which he gave to James McQuade, and I got them from him. These are the letters, and they are in Major Haddock's handwriting.

(One as set out in specification 3d, charge 1st, dated January 10, 1865, to Col Poole, from Haddock.)

(The other as set out in specification 2d, charge 1st, dated January 9, 1865, to Col. Poole, from Haddock [about J. D. Collins being a fine clerk.])

Had conversation with Geo. W. Smith about Haddock's ordering papers made by J. D. Collins out of office, to be received in the office, and also to have recruits go forward without five-eighths of bounty, and for other facilities; Smith said he could get them from Haddock; understood that Haddock had seen Smith at Utica previous to this.

He (Smith) told me he could get any order from Haddock that he wanted, and if he (Smith) could make a good thing out of it he would get me any order from Haddock that I wanted.

It was in pursuance to that conversation that Smith went to Elmira, and this was the time I told Haddock Smith started the day before to see him (Haddock). Had but one or two conversations with Smith in January, after Smith got the orders. I was at Baggs' hotel. Smith called on me at the hotel but few times before the month of March, after the month of March very frequently. I called at Smith's office often, three or four times a day, mostly to see Collins my clerk. I gave Smith $5,000 in 7-30's to deliver to Haddock in pursuance to agreement at the Osborne House, Rochester. I knew Smith to send to Major Haddock the following dispatches:

UTICA, *March* 9, 1865.

JNO. A. HADDOCK, Elmira:

Send telegram to Provost Marshal allowing A. R. to muster men for any place in western division; and pay recruits at mustering office, as State law may allow. Meet me at Osborne House, Rochester, Friday night. I will bring documents all right.

G. W. SMITH.

ROME, *March* 13, 1865.

Major JNO. A. HADDOCK, Elmira:

Everything is right. Business prevents my coming to day.

Will be on to-morrow. Send instructions to new marshal to muster same as before. Send answer by this line to Rome.

G. W. SMITH.

Collins went to Rome with Smith's assent, and sent this message. The following despatches were read in evidence:

ELMIRA, *March* 14, 1865.

GEO. W. SMITH, County Judge:

I have given directions as requested by you.

JNO. A. HADDOCK.

ELMIRA, *March* 14, 1865.

Major BEADLE:

By reading telegrams and orders on file you will discover that I have directed your predecessor to muster recruits to the credit of sub-districts in my division. You will act in accordance with such orders.

JNO. A. HADDOCK.

ELMIRA, *March* 24, 1865.

Judge G. W. SMITH:

It is impossible to come to Syracuse. Name some other place west. Important that I see you.

JNO. A. HADDOCK.

UTICA, *March* 24, 1865.

JNO. A. HADDOCK:

I will be at Canandaigua to-night.

G. W. SMITH.

ELMIRA, *March* 24.

GEO. W. SMITH, Utica:

I will meet you at Canandaigua House, Friday night. Answer.

JNO. A. HADDOCK.

After returning from Utica to Rochester, where I met Smith and Hoard, I sent Smith back to Elmira to see about getting men mustered in by Capt. Crandall for districts out of Capt. Crandall's district. I told Smith, while at Rochester, I expected Major Haddock. Smith said he had been to Elmira that day and left Haddock at the cars. He did not know why Haddock did not come on to Rochester. I told him I was expecting to see him. Smith said he could make it all right with Haddock. He then introduced me to Mr. Hoard. We went to the back room and talked it over. Nothing was said here about my giving up the letters. I talked in my room with Smith about giving up letters, and he said that

if I would he would get me any order from Haddock that he could. I told him I could not give them to him; that Collins had some of them, and the rest were at Albany. The letters referred to were some of those that have been put in evidence, and that I had better give up the letters, and if I had done it I would have had none of my troubles; that they had been very dear me. He (Smith) said I could have made $50,000, if I had sent the letters back. Smith went to Canandaigua with the $5,000 bonds, to meet Haddock there. Smith brought the bonds back to me. Recess.

Aaron Richardson, resumed.

This is one of the letters given to me by Major Haddock:

HEADQUARTERS, &c., ELMIRA, *Jan.* 7, 1865.

Capt. A. L. SCOTT, Provost Marshal, 22d District, Oswego, N. Y.:

Captain—This will be handed you by a friend of mine, Mr. A. Richardson. He is a man of integrity and capacity, and will do as he agrees in all things. Any good you may be able to do him will be thankfully appreciated by JNO. A. HADDOCK,

Maj. 12th Reg't and R. C., &c., &c.

George W. Smith showed me two letters from Major Haddock; he only read me parts of them; the letters said Col. Baker's detectives had been in Utica to find something against me, and that they could not find anything against me, and that Major Haddock had stood behind me. The three men were furloughed.

Cross-examined by Geo. W. Smith, of Utica.

When you spoke to me first about getting favors from Haddock, you said you could do as much with him as with any other man? Yes, you said you could get more from him than anybody else. You got dispatches from Haddock to Capt. Crandall for me to muster men out of this district. I communicated to you my arrangements with Haddock about dividing with him. I told you Haddock was offended because I had not sent him any money lately. I told you at Rochester about the $5,000 Haddock was to have. I told you that my money had been tied so that I hadn't been able to do anything more for Haddock. This was at the Osborn House, Rochester. You came to me several times after we met Haddock at the Osborne House, to know if I had got the $5,000, and I told you No. You enquired both for the money and his letters; you asked me for the money more than once; you asked me in my room, in the street and at your office; you asked me if the money was ready. When I gave you the $5,000 of 7-30's to take to Haddock, I told

you if you didn't get an order for the $20,000 of bonds, I had put up with Captain Crandall, and also an order about mustering some men, to bring the $5,000 back to me. I have not kept all the papers I ever had from Haddock; I had no intention at the time of saving up papers from him. You went different times to get other orders from Haddock for me; I sent you; you told me you tried to get an order to get up the $20,000 of bonds in Captain Crandall's hands, and that you couldn't because I didn't send Haddock's letters back to him. You tried to get an order from Haddock to the Provost Marshal at Syracuse to muster men for me the same as he (Haddock) had ordered it to be done for me at Utica: that is, for whatever they would take and go for. You said when you came back, that Haddock said he wouldn't give an order, but he would go to Syracuse, personally, for me, and have it done. I think you tried to get an order from Haddock to muster men for me in the eastern division; sometime in February, I think. I think you tried to get an order to muster men for me in Lewis county. That is outside of Haddock's division. You told me you had tried to get such an order. Under different calls for troops, I had supplied a great many men for Oneida county. Under the last call, the supervisors wrote me to furnish men. I was in communication to get a contract to fill the whole county. Collins made out papers at the Marshal's office. Haddock's letter to you (Judge Smith) which you read a part of to me, was between the 10th and 20th of March. That was the letter that spoke of Haddock's protecting me from Baker's detectives. No. I want to correct myself; the statement that Haddock protected me was not in the letter, I think, but you so stated in reading the letter. You read that Baker's detectives had watched me, and found nothing against me, and then you said that I had a good friend in Haddock in that matter, and that I might thank him for it. I was arrested by an order from Major Beadle; I do not know what for, but he gave a paper of some kind to arrest me; but I can't remember what it said; the judge advocate saw it; I think I imputed it to James McQuade; I have thought that Major Haddock was connected with it; several circumstances made me think so; one was that you went to see Major Haddock about it, and came back and told me you had a sealed letter from Haddock to Major Beadle about it; and I thought if the letter was written for my benefit, it was queer it should be sealed; I didn't tell Major Beadle that I didn't care a damn, that I knew that I was putting in bad men; nor did I

say that I was putting in men illegally; I may have told you that they were after Haddock; I didn't tell you that I had received inducements to inform on Major Haddock; I don't know of any inducements ever being held out to me to inform against Haddock; I have been told that I ought to divulge what I knew for the benefit of the public and the government. and to protect innocent men. Yes. You did expect to receive something from me out of my contract, for the assistance you rendered me with Major Haddock. You were not interested in my contracts any other way. You expected a portion for your share; you have in fact received only money for your expenses; I don't know that you have made any demand exactly upon me directly for what you were to have; I put the $5,000 in your hands, subject to my order; you were to return it if you did not get the order from Haddock; I was arrested a second time by Major Beadle; I was arrested again by Baker's men; I refused to acknowledge the arrest; I told them that before they took me away I wanted Mr. Conkling to know it; I was released by Baker's men; by the information Haddock gave me in advance about quotas in Oneida county, I expected to make a contract to fill the whole county; you said keeping Haddock's letters had been dear letters for me; that if I had given back the letters you could have got those orders, and I could have gone right through and made $50,000; you said you could have got from Major Haddock all the assistance I wanted; the assistance referred to my getting what I wanted with the Syracuse marshal about mustering men, and to other things. You told me when you caame from meeting Haddock, at Canandaigua, that he wouldn't write a letter to Syracuse, but would go and fix it himself, personally. Haddock told me, at the Osborn House, he would write me such a letter. Your remark was that, if I had given back the letters, and hadn't been arrested, I would have made $50,000. One thing Haddock agreed to do at Rochester, when I promised to send him the $5,000 by you, was to change seventeen credits that I had't been paid for in the town of Verona, Oneida county. The conversation at Major Haddock's house was in the dining room in the wing.

Re-examined by Judge Advocate :

The change of Verona credits would have made a difference of $2,000 to $3,000 for me. The $20,000 of county bonds was on deposit with Captain Crandall for the security of the men being credited to the Twenty-first District. Haddock said Captain Rich-

ardson, who was Provost Marshal of Oneida county, had a considerable amount of deserters' money, and that he would disgorge part of it if I would threaten him. Richardson is no relation of mine. Mr. Collins made conversations to me about Smith's wanting money from me; this is what I meant by saying no demand had been made by Smith directly. The contract I expected to get to fill Oneida county, was to be for $750,000; this was long before I saw Major Haddock; I told Haddock about it. Colonel Baker's detectives arrested me, or attempted to. I told them I wanted to see Mr. Conkling and let him know it before I went with them. The hotel keeper or his clerk went and got Mr. Conkling. Mr. Conkling, when he came, asked me if I was willing that he should tell Colonel Baker's detectives that I had furnished valuable information to the government. I told him I was. He then told the detectives that I had furnished information to the government which seemed to be truthful, and which was valuable. After hearing this, they said they would report to Colonel Baker, and if I was wanted I was to come to New York. I did go to New York, and saw Colonel Baker, and he did not continue me under arrest. This was all Mr. Conkling had to do with it. He was not my counsel in any way. I think I was discharged by Major Beadle before Smith told me about the sealed letter he had to Major Beadle from Haddock. I was first arrested by verbal directions from Major Beadle, and subsequently upon written directions. Think it was after my second discharge that Smith got sealed letter. There was no consideration for the $2,000 I sent to Major Haddock by Collins; it was a mere present to him by me; I owed him no debt.

Cross-examination resumed:

I knew of a telegraph to Captain Crandall about enlisting bounty jumpers and thieves.

Telegram was then read and offered in evidence by the accused:

ELMIRA, N. Y., *February* 17, 1865.

Capt. CRANDALL, *Provost Marshal, Utica, N. Y.:*

You seem to be filling the quota of Oneida county with bounty jumpers and thieves. You will stop such enlistments immediately. One hundred and fifty of your recruits deserted from Auburn in a body.

JNO. A. HADDOCK, *Major, &c, &c.*

I did not know of any men deserting from Auburn; I know of no telegram being sent to General Fry, at Washington, about my enlisting bounty jumpers.

Telegram read and offered in evidence by the accused:

ELMIRA, *March* 14, 1865.

Brig. Gen. FRY, *Provost Marshal General, Washington, D. C.:*

I am convinced that an extensive system of fraudulent enlistment is being carried on in the Twenty-first Congressional District. I think an investigation will disclose that the board of enrollment have given facilities for these operations, which have been mostly conducted by one A. Richardson. Certain supervisors are also implicated. I wish Col. Baker to come here, if only for a day. Some arrests should be made immediately. I have proof of a stupendous scheme of bounty jumping, having its centre at Utica.

JNO. A. HADDOCK, *Major, &c., &c.*

I heard from a bounty broker of a despatch being sent to Capt. Scott, Provost Marshal at Oswego; never heard of the substance of it; only know that it was in relation to me.

Telegram was then read and offered in evidence by the accused:

ELMIRA, *March* 6, 1865.

Capt. A. L. SCOTT, *Oswego, N. Y.*

I desire to warn you against the operation of a substitute broker named Richardson. Receive no men from him unless you have positive evidence that they are honest and reside in your district.

JNO. A. HADDOCK, *Major, &c., &c.*

A copy of this telegram was sent to Capt. Yates. No draft was reported back by Major Haddock that I know of. There were no orders given by Haddock for me, except those I have stated.

Re-direct examination by Judge Advocate:

I did not know that when Smith sent the telegram to Haddock, on March 9th, asking him to order men to be mustered for me for any place in the western division, that Haddock had sent any despatch to Washington or elsewhere about me. Nor did I know it when Haddock sent a telegram to Provost Marshal of 21st district, on March 9th, complying with Smith's request; nor when the despatch of "R. & S.," (meaning Smith and I) on March 10th, to Haddock to meet us at the Osborn House, nor when Collins telegraphed, with Smith's consent, and in his (Smith's) name, on March 13th, to Haddock that it was right and that Smith

would be up with what he was to bring; nor when Haddock telegraphed back to Smith he had done so, nor when Haddock sent despatch to Beadle on March 14th. When Smith telegraphed to Haddock to know if he had anything to do with my arrest, I did not know Haddock had sent a telegram to Gen. Fry and Capt. Scott. Nor on March 15th, when the answer came from Haddock to Smith, "not by my order." I did not hear, until after all these transactions took place, that Haddock had secretly sent anything to Washington concerning me.

In answer to questions by the court the witness said:

I showed the letters to my clerk, Collins, and one of them to Col. Jas. McQuade, and to no one else. I gave part of them to Collins and the rest of them were in Albany. Collins kept them in his uncle's safe. Smith said when he came back he had not tendered the $5,000 to Haddock. I gave all the letters directed to Provost Marshals back to Haddock, except the one to Capt. Scott.

The court closed its session.

ELMIRA, *Wednesday A. M. May* 24, 1865.

A. Richardson recalled.

The horse, etc., were worth $500, at a low figure; could go in three minutes; Elliott came with him from Albany.

The Judge Advocate read and offered the following dispatch:

ELMIRA, *March*, 9, 1865.

Captain CRANDALL:

You are allowed and instructed to muster recruits to the credit of any sub-district in the Western Division whenever presented. Your quota being filled, you have now time to help the other districts out.

JNO. A. HADDOCK, *Major, &c., &c.*

Re-cross-examined by George W. Smith, of Utica.

When I went to New York to see Col. Baker, I telegraphed to Collins that it was "all right." I asked you to telegraph to Haddock to know if he had had me arrested.

C.

TESTIMONY OF JOHN D. COLLINS.

John D. Collins, called for the prosecution, testified; I reside at Utica—have for nine years; am attorney and counselor-at-law; occupy same office as George W. Smith, and have since June,

1860; have been agent and clerk for Aaron Richardson; went to Elmira for him to see Major Hadcock, on the first Saturday in February, I think; took a package and letter to Haddock from Richardson; package was $2,000 in money, and the letter inside; I wrote the letter at Richardson's dictation; the letter was an introduction for me to Haddock, and a request to send a guard to Utica, and to give furloughs for three men; Nugent was one; they were three of the seven men Richardson had put in for $50 each.

[Counsel for accused objects to evidence being given in regard to the three men furloughed, on the ground that the specifications do not set it out. The court was cleared for deliberation, and upon the doors being opened, the President announced that the court had decided to allow the evidence as competent, under specification fourth. Counsel for accused then objects to any evidence being given under specification fourth. Court overruled the objection.]

The purpose we wanted the men for was not stated in the letter; I told him that they would be useful in getting men for Richardson; I saw Haddock in his office, and told him who I was, and asked him if I could see him privately and apart; he said I could; we went into the hall; I told him that I had a package of money for him; he said he could not receive it, and wanted to know if that was all; I told him there was a letter in the package; he said, "Take it out and I will look at it;" I took it out, and we went into the office; he wrote two letters; he wrote a letter to Captain Crandall; he handed it to me and said I might read it; another was to Richardson, a receipt for the money; and he also gave me a sealed letter for Richardson; he gave me a letter to Major Wilson's barracks, and he said if I would wait till afternoon he would drive me up there; I took the money out and gave it to him; Richardson afterwards showed me the sealed letter, and he handed out the list of seventeen men, and wanted me to pick out the three I wanted; I could not; I then gave him another letter that Richardson had received from two of these men; he said he would find out about the names of these men; it was then about one o'clock, and I went to the cars; he went to the cars with me; it is about one-quarter or one-half mile from his office; I gave him back the letter to Major Wilson, as I did not need it; he said he knew of me; had heard about me; he said he had sent a letter to Colonel Poole, to allow me permission to make out papers out of the Marshal's office; I told him I had heard so, but I had not seen it; I

was not acquainted with Haddock before this; I had seen him several weeks before, at Judge Smith's office; I said the letter was of no use, as Monroe had allowed me to make them out in the Marshal's office; he told me to show the letter to Crandall and Judge Smith; he said, tell Richardson to make his contracts, as he had talked to him before; it was to make contracts to fill deficiency of quotas; he said there was to be some deductions; while at the office he directed his clerks to see if they had what men were needed for guards; as the train was moving, he asked me if I had Capt, Crandall's *private ear*; I told him I guessed I could get it; he said you tell Capt. Crandall, for me, to do what is right, and I will stand by him; I said you must be sure to furlough those men for Richardson; he said, tell Richardson to write often; I returned home; I showed the letter of Crandall's to Smith; he said he wondered if Richardson meant to cheat him out of his pay; I told him I thought Richardson would not "go by" him; he said it looked very much like it; he was troubled about it, and some days after, Richardson stated to me that McQuade had said he (Smith) was afraid he was not to get his pay; I told Smith that it was wrong to say that, it might make feelings between him and Smith; Smith said it was McQuade's suggestion, and that McQuade had been whipping the post over his (Smith's) shoulders; I went, on February 20th to Elmira, to see Haddock about dispatches he had sent to Capt. Crandall, about enlisting bounty-jumpers and thieves, and also to see about Richardson's bonds which Crandall held as security; I saw Haddock; he wanted to know how Judge Smith was, and how things were in Utica; I told him there had been disturbance in Utica about his telegrams about enlistments; he said we had been enlisting bounty-jumpers and thieves, and we must stop; that seventeen had deserted from Auburn or Albany, in a body; I told him I wanted him to send an order to Capt. Crandall to muster in men for other districts; he said it could not be done; I told him Pond and Wilmot had an order from him to do it; he said it wasn't so; he had given no such order, and could not, that it was for Gen. Fry to do that, and he would advise Gen. Fry to do it.

Judge Advocate read and offered in evidence the following dispatches:

ELMIRA, *February* 28, 1865.

Captain P. B. CRANDALL, Utica:

If your quota is about full, you can muster in for Alderman Van Embergh fifty men, to the credit of Schenectady county.

JNO. A. HADDOCK,
Major, &c., &c.

Schenectady is in the Eastern Division:

ELMIRA, *February* 17. 1865.

Captain P. B. CRANDALL, Utica:

You can muster seven men for the town of Schuyler, Herkimer county, and notify Captain Emerson, Watertown.

JNO. A. HADDOCK,
A. A. P. M. Gen., &c.

I told him Pond & Wilmot certainly did have one, for I had seen it. If he had not given it, it must be a forgery. He said (bringing his fist down on the table) "By God it can't be done." Soon after this I went into the hall with him; he said that Richardson had broken faith to him, and shown his (Haddock's) letters. I asked him who told him, and perhaps I might explain it. He wouldn't tell me, but said that Richardson must explain it. We then went into a room across the hall, and I tried to find out if McQuade had anything to do with it. Richardson and McQuade had had a falling out before this, and I thought McQuade was at the bottom of it. I told him we thought the order to Crandall was to tie up Richardson's bonds, in Crandall's hands. He wanted to know how much, and why they were there for. I told him some $15,000 to $18,000, and that they were to secure the credit. He said that was all, then they were all right. He said, I hope Richardson has not got in a fix. He said Crandall would make his return on the first of the month, and credits would be given by return mail, and he told me to tell Richardson to get up his bonds at once, and keep still. He said, if Richardson was arrested, tell him not to talk, to keep his tongue still, that a great many men were convicted by themselves after they were arrested, when in fact there was nothing against them. He said, if Richardson was shrewd they would not find anything against him, and he would not be arrested. He said he wanted to see Richardson. I made an appointment for Richardson to meet him at Rome the next Friday, and he said I must be there too, as I might think of some things they would not. He said he would talk very differently to Richardson from what he did to me, and if he did not

meet him at Rome, he must give a good reason, or he must look out for himself. I told him Richardson wanted an order to Crandall to muster in men for other districts in the division. He said Crandall had such instructions already. I sent a telegraph to Richardson. This is the one.

ELMIRA, *February* 21, 1865.

A. RICHARDSON, Bagg's Hotel, Utica:

Our suppositions were wrong. All is true. Credits will be given. Get up those securities at once, and keep silence.

J. D. COLLINS.

I sent this after the talk with Major Haddock.

ELMIRA, N. Y., *Wednesday P. M., May* 24,

The Judge Advocate read and offered in evidence the following communications:

HEADQUARTERS, &c., ELMIRA, N. Y., *Feb.* 7, 1865.

Colonel B. F. TRACY, *Commanding Post:*

Colonel—for the purpose of conducting an investigation in certain abuses existing at Utica, N. Y., I have the honor to request that the following named men may be furloughed for seven days each, and that they be ordered to report to me before departing from the place: Joseph Smith, 91st N. Y. Vols.; James Long, 91st N. Y. Vols.; Thomas Nugent, 193d N. Y. Vols.; all enlisted at Utica N. Y., and forwarded to this post about ten days since.

I am, Colonel, very respectfully,
Your obedient servant,
JNO. A. HADDOCK, *Major, &c., &c.*

HEADQUARTERS DRAFT RENDEZVOUS,
ELMIRA, N. Y., *March* 4, 1865.

Major JNO. A. HADDOCK, *A. A. P. M. G., W. Div, N. Y.:*

Major—I have the honor to inform you that the following named men, Joseph Smith, 91st N. Y. Vols., James Long, 91st N. Y. Vols., Thomas Nugent, 193d N. Y. Vols., furloughed at your request, dated February 7th, 1865, to go to Utica, for the purpose of being witnesses in the investigation of certain abuses existing in that place, have all of them failed to report and, have been dropped from our rolls as deserters.

Very respectfully, your ob't serv't,
B. F. TRACY, *Colonel* 127*th U. S. C.,*
Commanding Rendezvous.

Endorsed as follows:

OFFICE A. A. P. M. G., ELMIRA, N. Y., *March 4th*, 1865.

Respectfully returned to Colonel B. F. Tracy, commanding post, with the information that two of the men named within have been arrested as deserters, and have been forwarded to this place for trial. JNO. A. HADDOCK,

Major and A. A. P. M. G.

Those were the three men I referred to. I started to return home after I sent the despatch. I missed noon train and returned. I went to Major Haddock's office about five o'clock. I asked him if he would give me a line to Crandall to give up the $20,000 bonds of Richardson. He said he couldn't give it, but if Richardson had any fuss about them he (Haddock) would help him out. I went home and told Richardson that Haddock wanted to meet him at Rome with me. I went to Rome on the day appointed, and returned on the express train, and did not see Haddock. Richardson went up also, and returned on the freight train; he did not see Haddock. Haddock told me on my visit there that Richardson had promised to see him often, and had not done it. I went to Elmira again about the 1st of March, for Richardson, to see Haddock, to get him to give Crandall an order to muster men outside his (Crandall's) district, and also an order to give up the bonds, and for amount of bounty recruits were to go for. I found him out of temper- He said something about our not meeting him at Rome. I said we were there; I said we must have failed to connect. He said he was there, and waited four hours to see us. I told him we were there, and waited and hunted over the train for him. I asked him what train he came on; he said the four o'clock train Friday night: in reality Saturday morning. He said he did not want Richardson to be sending me to him; he had rather see Richardson himself. He said Fiske had waited six hours for him, and he thought Richardson might have done as much. Fiske was a bounty broker.

Judge Advocate read and offered in evidence the following despatch:

February 24th, 1865.

FRED. FISKE: Meet me at Rome depot to-night.

JNO. A. HADDOCK.

We then went into the hall, and he said Richardson had broken his faith with him, and he (Richardson) thought he had got him (Haddock) into this thing so far that he couldn't get out of it:

but he had mistaken his man. He said that he would blow this whole thing up, if he had to go up with it; and Richardson might fire his biggest gun, and he would fire his. He said he wanted Richardson to tell him why those three men had been arrested at Utica. I told him Richardson said one of them had been arrested at Albany, and that the rest had got scared and run away; and that they had all broken their faithful pledges toward him. Haddock said he had put up $750 each for these men, and Richardson had said he would bear the expense of it and make it right. He had sent a statement to Richardson, and he had not paid any attention to it. Richardson had said I must furlough the men, cost it what it may, and he would pay it. We then went back into the room. He then repeated over two or three times about Richardson thinking he (Haddock) was in his power. He said he had done a great deal for Richardson, and had compromised himself in the eyes of his friends in doing what he had for Richardson. They were old friends; friends for a lifetime, and not of a day. I then talked to him about McQuade. He said he knew McQuade to be true to those who were true to him. I showed him Peter Clogher's letter. Clogher is supervisor of the 6th ward, Utica. It contained the cause of the difficulty between Richardson and McQuade. He rend the letter and handed it back to me. He said he would meet Richardson anywhere on the central. He said he had heard Richardson's time was worth $100 an hour to him. He said Richardson might come any time and see him with safety. He repeated several times that "he would meet Richardson any place he would name." I told him if he would name a place I would tell Richardson. He named Congress Hall, Rochester, on Saturday; I named Osborn House, and he said he would be there. I told him one thing I came up for was to get an order for the bonds in Crandall's hands. He said he could not do anything about it till he saw Richardson. He said, "If Richardson had met me at Rome he would have got an order for the bonds," but now he did not know what he was to do, or what he could do. I sent a telegram from Avon to Richardson. This is the one.

The Judge Advocate reads and offers it in evidence.

AVON, *March* 3, 1865.

A. RICHARDSON, Bagg's Hotel, Utica:

Nothing till you come. Have arranged for you Saturday night at Osborn House, Rochester. Home to-night.

JOHN D. COLLINS.

That meant, I made the arrancement between Haddock and Richardson, which I have spoken of. I heard Judge Smith say he was at Elmira the day I was there, or day after; Richardson started for Rochester on Saturday; got back at twelve o'clock noon; and Smith later, at four forty-five P. M.; Richardson wanted me to get Smith to go back to Elmira for him; Smith told me the difficulty between Richardson and him had been settled; he said he had gone up to Elmira to get an order for some bonds of McIntosh; McIntosh was a bounty broker; that is, he put in some men; Smith told me he had met Richardson at Rochester, and he said he (Smith) was somewhat drunk, and Richardson had tried to pump him, but he kept the vital point out of sight; I got Smith down to Richardson's room at Bagg's hotel, and got Smith to go back to Elmira for him; and I gave him a memoranda of things to do, some six or seven in number, about the same I went to see Haddock about; Smith did not want to go on to Elmira that night, but to wait and see Richardson; I gave him $25 for Richardson that night or the next morning; he went to Elmira on the next morning; was gone two or three days, and made an arrangement with Haddock to meet Richardson and him at the Osborne House, Rochester; they, Richardson and Smith went to Rochester; Richardson returned on Saturday night, and Smith, I think, on Monday noon; had conversation with Smith about general matters; Smith thought the best way was for Richardson to have a secret understanding with McQuade, and have the difficulties between them settled, but to have McQuade openly hostile both to Haddock and Richardson. I thought that was the surest way for Smith to get his pay from Richardson. I went to Rome and telegraphed Haddock in Smith's name. I went up on emigrant train. I was to telegraph "that it was all right, and that he had been delayed in business and could not come; would be on the next day with documents." I met Judge Smith in the hall and told him. He said, all right. I wrote the telegraph on a "Western Union" blank, but sent it by the "United States" line. I arranged with Giles Hawley to send the answer down to me. There were eight or ten days delay in getting the $5,000 in money. I thought he didn't want to raise it, and Major Beadle had arrested him about this time. When Smith returned from Elmira, he said that he could not do anything with Haddock till Richardson sent the money; that Richardson had made a great mistake; that he had not sent the money, if he had he would not have been arrested,

The $5,000 of bonds were 7-30's. Richardson said he wanted me to go and see Judge Smith off. He said he was to send the money to Haddock, and he wanted me as a witness that he gave Smith the money. I told him he had better look out, and not make himself liable by sending money to Haddock. I saw him deliver the bonds to Smith for safe keeping. Judge Smith told me I might tell Richardson if he would give him (Smith) $2,000 he would call it all square. He wanted the $2,000 for his services. Richardson had said he had promised Smith a share of what was made, and I asked Smith how much he wanted. Smith said he was not legally entitled to anything, and would take $2,000. Smith had been to Elmira once or twice for Richardson, and it was for that he was to have the $2,000 referred to.

Judge Advocate reads and offers in evidence the following dispatch:

ELMIRA, N. Y., *March 6th*, 1865.

Brig. Gen. J. B. FRY, Provost Marshal General, Washington:

I regret to state that the enlistment committee in this division, being in league with brokers, are nearly all corrupt, and the demoralization that exists throughout is come to the point that very few good men are now being put in. The committee do nothing unless they can make from $50 to $100 a man. Perhaps the draft will help the matter. I cannot now recommend anything that would prove beneficial.

JNO. A. HADDOCK, *Major*, *&c.*, *&c.*

And also the following dispatches:

ELMIRA, N. Y., *Feb.* 14, 1865.

EUGENE D. FISKE, 72 Genesee street, Utica, N. Y.:

If they do not settle for the credits they can be transferred to some other district.

JNO. A. HADDOCK, *Major*, *&c.*, *&c.*

ELMIRA, *Feb.* 23*d*, 1865.

E. D. FISKE, Utica, N. Y.:

The question of Annsville credits is not yet settled. When they are settled I will notify you.

JNO. A. HADDOCK, *Major and A. A. P. M. G.*

ELMIRA, *Feb.* 23*d*, 1865.

JAMES MCQUADE, Utica:

I have authoriezd Capt. Crandall to make the muster as requested by you.

JNO. A. HADDOCK, *Major*, *&c.*, *&c.*

Cross-examination by Geo. W. Smith, Counsel for accused.

I did not know at that time about any papers to be delivered with the $5,000 bonds I had from Richardson, before that Haddock wanted back his papers, after his return from Rochester. Richardson went to Albany and got the papers, and gave them to me for safe keeping. I put them in a safe. You did not ask me for them before you went to Elmira. I only got the letters to Capt. Crandall and Richardson from Haddock, and the letter to Major Wilson. I did not know that you went to Elmira on business for McIntosh until after you returned. You only said you had been there and tried to get McIntosh and Richardson's bonds. I was in Smith's office, and Richardson came in every day. The business of Richardson was between him and me. I spoke to you only generally, and on no private business. The recruiting business generally was not known to you. You were not generally privy to my going to Elmira. I opened conversation about your having your pay from Richardson. I think I said first if you (Smith) got a $1,000 it was pretty good pay. Smith said if he got $2,000 from Richardson, Richardson was a clever fellow. Smith said he would leave it wholly with Richardson. Smith said he had no legal claim against Richardson. Smith did not name any amount after that, but it was talked about. I said to Smith, Richardson had said he would make it all right. Richardson has not made any general settlement with me about my pay. It was not to be postponed on account of this trial. My pay was to come out of the funds in Capt. Crandall's hands. This was made in February. I think I heard Richardson say something about inducements being held out to have him inform against Haddock. No one offered him inducements. It was about March 1st. It was a trumped up affair to make some parties work. Richardson said he told some one that he had been offered high bids to inform against Haddock, and said he done it for the purpose of stirring up Smith to make him work; he said Van Emburgh had offered him high bids; I think Richardson said that he had told Smith so, too; he said Smith flew around more lively after that, and was smarter than before; that he (Smith) had not done much for him for the last winter; Richardson said that he had not had much that amounted to anything from Haddock; he said that Smith had done nothing that he (Richardson) wanted him to do; he thought he could have got along about as well without Haddock.

Re-direct examination.

These conversations occurred about the time Col. Baker's detectives were in Utica; Van Emburgh was a broker; he is the one who was named in the telegram to Capt. Crandall to muster for Schenectady; Smith had done nothing for Richardson, except to go on missions to Elmira to see Haddock for him; Smith knew of my going to Elmira the first time after I come back; I gave Smith a memoranda of what he was to do when he went to Elmira; the furloughing of the three men was not known to Smith at the time I went to Elmira; I wrote to Haddock for Richardson about once a week.

Re-cross examined by Geo. W. Smith.

I did not tell Smith that I had been to Elmira for the same purposes he was going for; Richardson said Smith had never accomplished anything for him he sent him to do.

In regard to the furloughing of the three men, the witness stated that he told Haddock that Richardson wanted them to help him (Richardson) in his recruiting business.

When Haddock handed me the letter for Capt. Crandall, that I was to show Judge Smith, he asked me if that was what was wanted, if it covered the point I came for. I told him it did. Richardson afterwards showed me the sealed letter from Haddock. This is the one.

Feb'y. 6 1865.

A. Richardson, Esq.:

My Dear Sir—From present appearances it is quite probable that 25 per cent. of the quota under the present call will never be called for. Consequently, if you have contracts to fill quotas of sub-districts positively made, great benefit will thereby accrue to you. "Joe" shall be attended to. None of the other counties, save Erie, are in the same condition as Oneida, and I do not think you could get a contract at Buffalo.

Respectfully, your friend. [No signature.]

Haddock told me he had given Smith a letter to Col. Poole, the Provost Marshal, to allow me to make out enlistment papers out of his (Poole's) office. I told him I had heard of it, but that it had never been delivered; that it had been kept back *all for his* (Haddock's) *benefit.* Haddock told me to show the letter authorizing Capt. Crandall to muster men without any money going with them, to Judge Smith before it was given to Capt. Crandall. Haddock said to me, you tell Richardson to be sure and make his contracts

to fill deficiencies in quotas as he and I talked when he was here. That was, Richardson was not to agree to furnish so many men, but to fill deficiencies of quotas more or less. In this connection Major Haddock dropped something about deductions that there would be. It was only a word.

When Haddock asked me if I had Captain Crandall's *private ear*, I told him I thought I could get it; he said you tell Captain Crandall, for me, to do what is right, and I will stand by him; he said it will not do for me to write this; but you tell him so for me, and tell him not to be afraid; that flaws will not be picked with him. Major Haddock hung on the cars after they moved off, and the last thing he said was in answer to my saying, Richardson wanted him to be sure and have those men furloughed right away; Haddock's remark was, "I will do it this very day; I don't forget such things.

When I asked Haddock, in his office, if McQuade had anything to do with his thinking Richardson had showed his letters, he did not answer it but evaded it; he said he hoped Richardson had not got his securities into a fix with Captain Crandall, and that I must tell Richardson that he would see that the men were credited, and then Richardson must get up the bonds at once and keep still. On the occasion when he was out of temper, he said Richardson agreed to come and see him often; that Richardson hadn't seen him, and hadn't done as he agreed with him. Richardson and Judge Smith started for Rochester, to meet Haddock, about the 10th of March. When they came back, I heard from both of them that Richardson was to give Haddock $5,000. Smith and Richardson talked it over several times in my hearing. When the $5,000 of bonds were to be delivered over to Smith, I told Richardson that he had better look out, that Smith and Haddock might turn against him and bring him out, and that he had better do it in such a form that it wouldn't look like bribery. He said he'd fix that, and he wanted me to be a witness when he gave the bonds to Smith. I did witness the ceremony of his handing them to Smith, and saying in my presence, "It was for safe keeping, and for no other purpose." Then I left. Smith never did anything for Richardson that I know of, except to assist him with Major Haddock. His claim upon Richardson for a share or for pay was for what he had done with Haddock.

Cross-examination by George W. Smith:

We construed the letter brought by Richardson from Major

Haddock, to be an authority to muster men without any bounty. We did not always act upon it. We thought it not right, and insisted upon the bounty going to the men, or for their benefit, as far as we could. Capt. Crandall and myself talked it over. The seven men were mustered in, receiving $50 each, and we required $550 of money to be put up as security in case of desertion. We sent this in our report to Major Haddock, and stated the circumstances, and he said it was satisfactory. Subsequent to this order men received any sum they would take. Capt. Crandall told the recruits their rights, and how much they were entitled to have, and insisted they should have that they were entitled to. Some went for one price, some another. Capt. Crandall required security in all cases in which he thought they might desert. Sergeant Sabin let out the eight men. I know it from reports given to us from those who went there from our office to find out about it, and who arrested Sabin and the two at the theater or concert. Our construction of the order was that if we enlisted men for no bounty it would be satisfactory to Major Haddock, but it did not satisfy us. We thought if we did muster according to it, it was all right under this order, as far as Major Haddock could make it so, but we required security whenever we could.

D.

Testimony of George W. Smith.

The counsel for accused at once called Judge George W. Smith as a witness for the deffense, and being duly sworn by the Judge Advocate, testified as follows:

I am acquainted with Major Haddock; some time after the Major went to Elmira as Provost Marshal, I had an interview with him there, and in conversation I mentioned to him the name of Aaron Richardson, a recruiting agent; I went to Elmira at the request of Aaron Richardson; he wanted to obtain authority for his clerk, Mr. Collins, to make enlistment papers outside the Provost Marshal's office; also to mustering men into the service upon a portion of the local bounty being paid to them; I had further conversation with Richardson; he wanted to get some orders of Major H.; I told him I thought that I could perhaps get any order from Major H. that any person could get, but that he must not expect an improper order; that Major H. Would not give him any improper order; I did not say to A. Richardson that I could get almost any privilege for mustering in men.

Question by Col. W., counsel for accused:

When you went to Elmira under Richardson's instructions, state what you said to Major H., and all that passed between you.

The Judge Advocate here objected to this question, as 1st, incompetent; 2d, a conversation between two persons, charged as being accomplices, of which conversation no evidence had been given by the prosecution; 3d, the declarations of Haddock to Smith, or Smith to Haddock, not relating to any evidence given by the prosecution, are inadmissible.

The court was now closed for deliberation upon the objection.

PROCEEDINGS OF THURSDAY CONTINUED.

SYRACUSE, *July 13th*, 1865.

The doors of the court being re-opened, the President announced that the latter part of the question should not be asked.

Examination resumed:

I applied for authority for Mr. Collins to make enlistment papers outside the office, to allow men to be mustered in upon payment of five-eighths of local bounty, as was the understanding in our town. There was a mistake made in writing, in the letter given me for Collins—"three-eighths."

Question: What reasons did you urge upon Major Haddock for granting Richardson the facilities you asked for?

[Objected to by Judge Advocate. Court cleared, and decision rendered that it may be answered.]

Answer: I said to him that Richardson had been largely engaged in filling previous quota of Oneida; that he was relied on there as a man to aid them in filling the quota of that county, and I thought any facilities given him to carry on that business would meet the approbation of the people there; I told him that Collins was a competent and reliable man; Major Haddock had seen Collins in my office once before; Richardson said that if I would get him facilities at large for his business, he would compensate me for doing so; my going to Elmira on the third day of March had nothing to do with Richardson's business; from Elmira I went to Rochester, and met Richardson there the next morning, accidentally; Mr. Hoard went to Elmira with me; I understood from Major Haddock that Richardson had papers in his possession which he desired to obtain possession of; Richardson inquired of me at Rochester about Major Haddock, and I think he said he expected him there; he stated that Major Haddock was hostile to

him, and was doing something to interfere with his business; I think we talked also about an order for holding securities, and a telegram that Major Haddock had sent down, charging that thieves and bounty-jumpers were being enlisted in that county; I told him there was a difficulty between them, and that I would endeavor to settle it; I said that to him because I was then intent upon getting those papers; I sought rather not to disclose what I did know, than to state what I did know; I left Utica again for Elmira on the 6th of March, by request of Aaron Richardson; it was arranged at that time that Haddock would meet Richardson at some future time to be fixed; I believe it was agreed that the time and place might be fixed at a subsequent time by notifying Major Haddock.

Court adjourned until 10 o'clock A. M. to-morrow.

PROCEEDINGS OF FRIDAY.

The court met pursuant to adjournment. Record of yesterday's proceedings read by Recorder and approved.

The fact of Colonel Haddock's arrival was announced. Colonel H. then made his appearance in court, and stated that he had expected that notice would have been sent to him by the Judge Advocate, and also by the War Department, of the time and place of the adjournment of the court, from Elmira. Not having received such notice, he had not made his appearance in the court, but he was now ready to resume his seat if permitted to do so.

The court, having been cleared for deliberation, expressed its opinion through the President, General Robinson, that the member who had been absent could not legally resume his seat as a member of the court.

The testimony of G. W. Smith was then resumed.

The arrangement for the meeting between Haddock, Richardson and myself on the 6th of March was for the purpose of obtaining for Richardson a certain order which he wished to obtain from Major H. I went to Elmira, saw Major H. and told him what R. desired. He would do nothing about it until he had seen R., and he had given up the papers and documents he held in his possession; and finally agreed that he could meet R. at Rochester, with myself. He said he would not meet R. without me being present myself. This meeting was arranged at Elmira on or about the 6th or 7th of March. This meeting occurred on the 10th of March. I went there in company with R., and met Haddock

there; R. and H. went to a room together; I was not present; after a time I went to the room; there was nothing said about any money or draft in my presence; the first that I heard of the $5,000 extortion by Haddock was from R. after we went to Utica; on every occasion afterward I asked R. for the papers Haddock desired of him; he always evaded giving them up; they were desired by me before we went to Rochester, but he did not give them to me; he said they were in his trunk; I told him that the papers were of much consequence, and that he would probably succeed in nothing with Haddock, because he had not produced them; I did not offer to deliver to Major H. any money; I intimated that I had it, but he shook his head and gave me to understand that he did not wish anything to do with it; he said, "I shall have nothing more to do with Richardson;" I have no recollection of anything being paid at Rochester—about $5,000; I once made a remark to Richardson, that, had he given up these papers and continued on his business, he might have made $50,000 more; I had no knowledge of the objects of Collins' visits to Haddock; I never heard of any lists of surplus credits till Major H. told me that Richardson had got from him such a paper; Richardson never informed me of any negotiation between him and Haddock by which they might divide the profits by filling the quotas, the towns being ignorant of the credits; Major H. refused me some of the orders which I sought to obtain for Richardson; I I was employed by Major H. to negotiate to obtain certain papers in the hands of Richardson, and I did negotiate with him for that purpose; this was the main purpose of my negotiations, as far as I recollect; he told me that men on the other side were trying to displace Major H., and the other side were bidding big or offering strong inducements to get him to inform against Major H.; Major H. offered to compensate me as his attorney liberally; Richardson said that H. had never done anything to aid him in his business; that he embarrassed him; that the telegraph despatch received embarrassed him; I never said to Richardson that Haddock had protected him, or anything of the sort; I was never at the Provost Marshal's office in Utica to aid Richardson in recruiting; there was never any understanding between me and Major H. about making or dividing any profits that might be made by filling quotas or for giving any special orders to any bounty broker; excepting the three obtained for Richardson and one for a man by the name of Norton; I never had any connection with Richardson

in filling any quota; I never made any proposition to Major H. to become pecuniarily interested in recruiting in western New York, or elsewhere; I do not think I ever told Collins that the difficulty between R. and H. was because R. had not paid H. some money ($5,000), or that I was not legally entitled to compensation from Richardson; I never received from Major H. any valuable consideration for anything I ever did in filling quotas, or anything of that sort.

Cross-examination by Judge Advocate, Hon. Roscoe Conkling:

I have been in this city during this trial, at the Globe Hotel, where Major Haddock and his conusel are stopping; I have been examined by the counsel for the accused, from a memorandum prepared by himself; I first saw Major Haddock, in Utica, about the time he was appointed Provost Marshal; on one occasion I saw him at Colonel James McQuade's office; the Major dined with me at Cassady's salooon, under McQuade's office, and then we went into McQ.'s office; we were there several hours; I do not recollect that we went anywhere else together after we left the office that time; I think Major H. went away on the cars; we left McQuade's office 11 P. M.; I do not think I saw him again until I went to Elmira; I do not know a man in Albany by the name of Jack Lawless; I never proposed to any man except Richardson to procure peculiar facilities for recruting; in the last of December I wrote to Major H. asking him to direct that a man by the name of Norton, who was in the county jail for larceny, should be mustered into the service—the whole of his bounty to go to a man by the name of Utley; he finally did as I requested; I made no order to have Norton brought before me to let to bail—the order was made by another Judge; I am positive that I made no order to bring Norton before me.

The Judge Advocate repeated the question, and the witness repeated the answer, whereupon the Judge advocate produced the following order, and asked the witness if it was not his hand writing, and he admitted it was:

To the Sheriff of Oneida County:

Let Chas. E. Norton be produced at my chambers for the purpose of an application on his part to be let to bail.

GEO. W. SMITH, *County Judge.*

Dated UTICA, Jan. 5, 1865.

The witness proceeded: Utley was his bail, I accepted him as bail; Norton was mustered in and his bounty went to Utley; Utley was then my partner.

PROCEEDINGS OF FRIDAY CONTINUED.

SYRACUSE, *July* 14*th*, 1865.

Cross-examination of George W. Smith continued:

I think I did admit Norton to bail on that day; I never filed the bail bond; I never delivered it to the district attorney; I have never denied any knowledge of that bail bond when application was afterwards made for it; I do not think application has ever been made to me to find the bail bond of Norton; Henry T. Utley, my partner, was his bail; I wrote to Haddock that Utley was to receive all of this man's bounty money; it was to go to him in consideration of his going bail for him, and it was under permission that came in reply to this letter that Norton was mustered in; Colonel Poole was then Provost Marshal; I was informed that he had refused to allow him to be mustered; I think it was previous to the 8th or 9th of January that Richardson asked me to obtain from Major Haddock authority for Collins to make enlistment papers outside the office, and authority for men to be mustered into the service upon such a portion of the local bounty being paid to them as they would agree to take; I do not think I applied to Haddock for an order stating the specific amount of bounty to be paid them; what I meant to state yesterday, when I stated that Richardson wanted me to get an order that they might be mustered for five-eighths, and that by mistake Major H. wrote the order "for three-eighths," was this: that in consultation with Haddock, the thing decided upon with him, as I understood it, was that he should make an order by which the men could get five-eighths, and three-eights be retained by other parties to whom they chose to assign it.

Q. By Judge Advocate. Do you mean to say that now?

A. That is as I recollect it; that was the talk; but the letter was written upon three-eighths being paid them by mistake; this was on the 9th or 10th of March.

Upon the Judge Advocate inquiring whether the witness had not forgotten that there was already in evidence in the court, a circular, published days before that date, allowing men to be mustered in upon being paid five-eighths, and permitting them to do as they chose with the remainder, the witness replied that he had forgotten whether it was so or not. Upon being further questioned whether, in the face of this circular already issued, he still said that he and Major H. had agreed that permission should be

given Richardson to do precisely what the circular had previously permitted all over the Western Division, Judge Smith replied that the whole thing, taken together, convinced him that he had been mistaken in what he had answered, but that was the impression he had. I did not say that I had applied for a five-eights order; the permission was to let the men go for what they would agreed to go for.

Q. By Judge Advocate. You retract the statement, do you not, that Major H. agreed to give an order allowing men to be mustered in for five-eighths, and that he wrote a letter for three-eighths?

A. I think I am not entirely certain that that was not the design; but it seems that I was probably mistaken; when I returned from Elmira with these two letters I delivered them to Col. McQuade; I think I did not show them to Richardson before I delivered them to McQuade; I do not know how Collins got the idea that I could obtain orders from Major Haddock, unless it was because I had told him I had been long acquainted with Major H., and that we were old friends; Richardson said he wished to procure facilities from him (Haddock) for recruiting, and that if I would obtain them for him he would compensate me and make it for my interest; I do not recollect that he said anything further upon the subject, but he did say further, I remember, that he wanted an order for Collins, and authority to allow men to contract for what they might choose to go for; I replied in substance, that I thought I could, and I would get him any proper order from Major H., but that he must not expect, and that Major H. would not make any order that would violate the regulations; I told him this because I knew that he (Richardson) was a man who would desire to get things "clear to the verge of the law and beyond;" I suspected him to be such a man as I have described, from the fact that he was a bounty broker; I knew it to my own satisfaction, from the first time that I heard of him in the preceding fall; I did not say to Richardson that "Haddock was on the make;" I had heard that previous to this time there was a proposition that Richardson should fill the quota of Oneida county for a large sum of money; I had heard it from Collins and from R. himself; I think R. and I talked about it several times; I do not recollect that anything was said about my having an interest in that contract; I do not recollect any such thing; I never heard it suggested that I was to have an interest of $50,000 in that contract; I may have had some talk with the supervisors about that contract; I did have; I do not recollect talking

with any of them excepting James G. Preston, about the contract; the assumed quota for the basis of that transaction was about 1,000; I do not know what the number of men paid for by the county was; I do not know what the actual quota, less than twenty-five per cent. not called for was; I do not know that it was 783; the quota was 1,044 as assigned; the twenty-five per cent. was to be deducted from this; I do not know that under the operations which have been detailed here, that the county furnished and paid for 1,200 men to fill a quota of 773; after I wrote Haddock about the Norton matter I do not recollect writing him again until the latter part part of February. From January 10th to April 1st I wrote Haddock a number of letters, and received from him perhaps ten or twelve letters. I do not know where these letters are; some of them have been destroyed; I destroyed four or five of them; I burned them; others may be among other papers in my office. On the 3d of March, when I reached Elmira, Haddock said something to me about Richardson wanting to meet him, or, that he had agreed to meet Richardson at Rochester that night; I do not recollect whether or not Hoard was then present; he was in Elmira at the time; I do not recollect whether he went with me from Utica; I do not recollect that I stopped in Syracuse; I think I did not.

Q. By Judge Advocate. And you cannot remember whether S. Floyd Hoard was there or not?

A. Since you speak of it, it seems to me that he was upon the train on the way down; I did not pay much attention to him at the time; Major Haddock and Hoard went with me to the cars in Elmira, and Hoard went with me to Rochester; when I went to Elmira from Utica on that occasion, I went to Syracuse; I came to Syracuse, thence to Binghamton, and from thence to Elmira; I do not know that Hoard and I had any particular reason for returning around by way of Rochester on that occasion, except for convenience; it was not the nearest route to get home; it was not the furthest; I could have gone further out of the way; I could have gone to Buffalo, I suppose, to get home. My meeting with Richardson at this time was accidental and without pre-concert with him; I testified that my meeting Richardson was accidental.

Q. By Judge Advocate. And that you said, although you had been told by Major Haddock that he was to be there, and you and Hoard went up to meet him?

A. Yes, sir.

Q. You went to the Osborn House there, did you?

A. Yes, sir. It is three-fourths of a mile from the depot; I do not know that it is more remote than any good hotel in Rochester; I do not know that I understood from Major H. that the meeting was to be at that hotel; I do not say that I did not understand it; Richardson paid my bills there at that time; I do not know where the order upon Crandall to surrender the bonds in his hands was made; I understood that Hoard had it with him when he started from Elmira; it came from Major H.; I do not recollect whether I saw the order made for the delivery of those bonds; I do not know what the bonds were deposited with Crandall for; I think I heard Richardson or Collins say that they were put up for the purpose of securing credits; I remember, in a general manner, what happened at Rochester on the 3d or 4th of March, when I was there; I cannot say that I recollect it all; I do not know of any particular reason why I do not recollect it; I do not think I was intoxicated upon that occasion; I did not tell Collins I was; I cannot say I was not at all intoxicated; we indulged in liquor some; I do not think I had drunk liquor enough so that I did not have my complete recollection and powers of mind in every respect; I cannot recollect what conversation I had with Richardson upon the evening of that occasion at the Osborne House; I roomed with Hoard that night; I saw R. pretty early in the morning; I cannot repeat accurately the conversation that then occurred between us; he spoke about Haddock's being irritated with him, and from the fact of his not coming up he inquired of me why Haddock had not come; I do not think I told him accurately why he had not come; I probably evaded the question; I probably did not know; I evaded his question because I knew that Haddock had instituted a course hostile to Richardson, and I did not wish Richardson to know it, and yet I did not know why Haddock had not come; I knew some reasons why Haddock had not come, and there were others I did not know; I recollect he said he supposed one reason why Haddock was irritated with him, was in regard to the three furloughed men; that he had got three men furloughed, and they had deserted and had not returned; I do not know what he stated as to Haddock's saying he had put up money for them; I told him, whatever was the difficulty between them, I thought I perhaps might get it arranged; that is the whole conversation, so far as I recollect; I staid in Rochester all day and then took the night train; I had no business, except that I was on my way

home; it was Sunday, and I took the first train; I do not recollect where we went—we staid about; that night I started home, and Richardson came to the depot with us; I took the train around by Auburn, and he went the other way; from Auburn I went to Utica.

Q. By Judge Advocate. Did you tell Richardson, if these bonds were delivered by Crandall to Hoard, Haddock would deliver them to him?

A. About that time or subsequently, and during the pendency of this order for them, I think I did hold out the idea.

Judge Advocate: I did not ask you about holding out an idea; I asked you if you told Richardson if the $2,000 were delivered from Crandall to Hoard, Haddock would give them up to Richardson?

A. I did; I do not think I told him at Rochester he would give them up; I did not tell him at Rochester that if these bonds were delivered up to Hoard Haddock would give them to him (Richardson); I never told him anything of that sort till afterward.

Q. By Judge Advocate. How soon afterwards do you say you told him that?

A. I am not certain that I told him that, in terms, at all, but I think I did; of course, it must have been after my return from Utica; probably two or three days after. I guess at that time I had not asked Richardson to give back any letters to Haddock. I do not see that the giving up of these bonds had anything to do with Richardson's giving up Haddock's letters in exchange. I did not state to Richardson how much any party beside him must have for the surrender of those bonds, if they were surrendered. On my return from Rochester, on that occasion, Richardson and Collins were both at Bagg's Hotel; I had conversation with Collins as to what had transpired at Rochester. Collins gave me a written memorandum of what I was to do with Haddock when I went back; I think that memorandum is among my papers somewhere; I think I showed it to Major Haddock; I heard Collins enumerate, upon this examination, the things that memorandum contained; I think he did not enumerate anything I said it did not contain. The room Haddock and myself occupied on the night of the 10th of March was the same one in which he had the confidential conversation with Richardson; we slept together; Richardson left the room very soon after I entered it—in three or five minutes; I cannot recollect the conversation that occurred before he went out; I do not think I can recollect a word of it, nor the subject to

which it related; I do not think there was anything important said, nothing to be impressed upon my mind; I suppose that Haddock, on that ocaasion, was seeking among other things to get letters and papers back from Richardson; there was nothing said at that time between Richardson and Haddock that led me to suppose so; I suppose so from reasons I had previous to that; I think cannot now repeat anything that was said by either myself, Richardson or Haddock, before Richardson went out of the room; when I told Richardson that the *main* thing was for him to first give up the papers, I meant to have him understand that negotiations were going on, and to have him suppose that Haddock would accept the $5,000 and give him these orders, and that there were other things in the matter beside the mere giving up of these letters, otherwise there would have been no motive to have led him to do so; I did not put the proposition to him that he was to give up the papers and pay $5,000; the orders he was to get were the orders recited by Collins in the memorandum; I probably spoke to Richardson three or four times about this; I think that Richardson first mentioned to me, upon my return to Utica, the fact that Haddock was to have $5,000 upon that occasion; I do not think that I told Collins, as he stated, that Haddock was to have five thousand dollars; I do deny that I told him so, on my recollection; I deny that I told him several times during the day or two succeeding this that Richardson was a fool that he had not got that money, that $5,000 in money, that is, I deny it on my recollection, that is as strong as I will say; Richardson did give me $5,000 in 7-30 bonds at my office on, I think, the 16th day of March; this is the $5,000 that I say that I called Major Haddock's attention to, but did not offer him; I never had the currency for it, but simply the bonds; those 7-30's are numbered I suppose, so that each bond has a mark upon it peculiar to each bond; I called Major Haddock's attention to this fact, at his office in Elmira; I did not meet Major H. at Canandaigua after receiving these bonds; I had no appointment with him to do so.

Q. By Judge Advocate: You did not at any time, about that time, meet him at Canandaigua?

A. Yes, sir, I did; I do not remember how soon after; I think it was previous to the 16th; very soon after I had been to Rochester, I met him at the Canandaigua House; I slept with him; that appointment was made by us mutually, by telegraph; I did not have the bonds with me then; I had no business with Haddock then, except this Richardson matter; I next met Major Haddock

on the 18th, when I had the $5,000 of bonds; I also carried the memorandum Collins made me; I am sure of this; I do not think that Collins gave me that memorandum on the 5th of March instead of the time that the bonds were given me to take to Haddock; I am not certain that I had the memorandum; I do not know that I took the memorandum at the same time that the bonds were given, but I know that I had them both at the same time; my impression now is that I did take the memorandum from Collins on the 5th of March, but I also had it on the 16th; I started for Elmira on the day after I took the memorandum—on the 6th; I got back to Utica from Elmira, so that I left there again on the 10th; when I took the $5,000 to Elmira, I called Haddock's attention to the fact that I had these bonds, and I exhibited the outside of them; he did not look at them; he saw the outside so as to see what they were; he saw the nature of them: and then he said that he had made up his mind not to have anything more to do with Richardson; my impression is that he told me at Canandaigua that Richardson had a paper he wanted to get back, relating to credits; it was at the meeting appointed by telegraph; I have no means of fixing the date of the time when Richardson first told me that inducement had been held out to inform or take part against Haddock; I think it was in March; I do not recollect whether it was before or after detectives had been in the Western Division to ferret out these frauds; Major Haddock's letter to me stated the fact, but I am unable to say as to the time; it was not a matter that impressed me particularly at the time; the first time that he spoke to me about it, as I recollect, was in my office; I think he had alluded to it before; I had heard him say before that they were after Haddock; that was about the substance of the conversation; nobody was present in the office at the time; he said that there were movements going on to remove H., and that the other side had bid high for him, and that large inducements had been held out to him to inform against Haddock; perhaps he said, "It was to make a case, or to give evidence, or to say something against him:" I think the precise remark was, "to make statements against Haddock;" that was all he said upon the subject; I did not say much to him; I simply heard his talk about it; I did not know at that time that detectives had been sent from Washington to report to the Judge Advocate, with regard to frauds in the Western Division; I subsequently learned that such was the case; I do not think that I informed Major Haddock of the fact that detectives had been sent from Washington to report to the Judge

Advocete; I did not know until now that they were directed to report to him; I did inform him of the fact, at the time, that Major Luddington and some other parties were at Utica; Luddington was an inspector sent from the War Department, and then F. M. Ellis was there; I reported to Major Haddock that Luddington had been in Utica; I did not connect the name of Judge Advocate with it; I think Collins did show me a letter written by Major Haddock to Capt. Crandall, which he brought from Elmira; I read it; I do not recollect now that I told Col. McQuade of that letter; I think I did write Major Haddock immediately after that; I do not know whether Col. McQuade wrote to him immediately after that; I did not tell Collins that Richardson should pay me $2,000, not for what I had done, but for what I had not done to him—nothing to that effect; I did not tell that to him in my office upon the occasion when we talked about the bonds; I did not tell him I ought to have $2,000 for what Major Haddock had not done to him.

The Judge Advocate here handed a letter to the witness, who acknowledged that it was in his hand-writing, signature and all.

I did not speak of my getting the Verona credits changed, but of applying for it ; I do not know that any agreement as to my compensation was made ; I think Richardson said he would pay me a considerable sum if I would do so ; my impression is it was $500 ; I did not tell him, during the week of which I have been speaking, after my return from Rochester, that if he would have the money ready, and those letters, that the Verona credits would be changed.

The Judge Advocate then offered and read in evidence the said letter, as follows :

UTICA, *April 4th*, 1865.

My Dear HADDOCK :

I enclose herewith Crandall's explicit statement in regard to the money left with him for Doyle, Ryan, Thompson and Cavanaugh. Being made by him in relation to his official acts, I did not ask him to verify it by oath, but it is undoubtedly the statement that he would make under oath, and will justify all concerned in acting upon it. I hope to get from headquarters a favorable consideration for this matter, as I take a personal interest in it. McIntosh would have notified Crandall not to pay out the money had I not advised him not to object, and said to him that he would not be prejudiced by it.

P. S.—Since writing, via another I have seen the person alluded to in that letter, and he denies having disposed himself as rumor declared, and says that matters are in *statu quo*. Crandall, he says, has secreted the bonds, and that the sheriff cannot get access to them. I think the pressure that Hunt is bringing upon him in this matter, is for the purpose of coercing him into an alliance against you. If this should be the fact, it would be suggestive. Would it not be well to relieve him from the other quarter? He asserts that he has done nothing and contemplates nothing in any way hostile to you. Of course this has no weight, except in disclosing the attitude which he wishes me to *suppose* he occupies. You will judge for yourself as to the probable truth. He also says that he received a letter from you to-day, of about the 27th, which accounts, he says, for his not attending to the matter referred to in it.

As ever, truly yours,

GEO. W. SMITH.

On a blank page was the following: "I am very anxious for a favorable result in regard to the enclosed matter."

The "Hunt" alluded to in this letter was Mr. Ward Hunt, counsel for the Government in the suit brought by Richardson to recover these bonds, and the "person" I referred to in that letter was Aaron Richardson, the same person who denies he has "disposed" himself. When I said in this letter, "Would it not be well to relieve him from another quarter?" my idea was that Mr. Hunt was defending this suit for those bonds vexatiously—or while in my opinion Richardson was entitled to them by law, there was a vexatious delay made by the suit—and what I suggested here was, that it would be better for Haddock to make an order to give up the bonds and relieve Richardson in that way, and in that way prevent his exposing him; that he had better make an order to have the $20,000 of bonds given up, and thus prevent his hostility against him. In 1862, as county judge, I was authorized by law to decide upon draft exemptions, and under the State draft for last year; Henry T. Utley was my partner; we both made papers at that time for the exemption of men from the draft; I passed upon these papers, and we shared the profits.

The court here took a recess until 3:30 P. M.

AFTERNOON SESSION.

Cross-examination of witness continued:

When I was at Rochester on the 6th instant Richardson did write a letter to Major Haddock and showed it to me; I do not recol-

lect its contents at all; I cannot relate a single word that that letter contained; I did not go to Lewis county to see and arrange contracts for Richardson; I negotiated at Watertown and somewhat in Utica to put in men for Lewis county myself; I was not in the bounty broker's business; I went up to see whether contracts could be obtained for putting in recruits at Lewis county, at the request of Martin F. Hamilton; I think I did not make any effort anywhere to get contracts for Richardson in Lewis county; I have no recollection of doing so; I do not know that I telegraphed to Richardson or Collins in regard to contracts in Lewis county; it seems to me, while I was in Watertown upon this matter, at the request of Hamilton and Brown, I did telegraph something upon that subject to either Collins or Richardson—it was to see whether they could furnish men; I intended to make contracts in Lewis county upon my own hook, and to get Richardson to fill them. As county judge, in connection with two justices of the peace, I have the appointment of the Excise Commissioners for the county of Oneida, and the appointment is made by these three officers of which I am chief, by the Court of Sessions.

The counsel for the accused here objected to this course of examination as irrelevant and immaterial.

The Judge Advocate replied, that he offered to show by this witness, in order to destroy his credibility as witness, that being County Judge of Oneida county, he drew up and induced the Commissioners of Excise, appointed by him, to sign an appointment of himself as prosecuting attorney of the Board of Excise in causes to be decided by him as Judge; that this act was secret, and that subsequently he exacted and accepted, and took and kept a bribe—the sum of $500 in money—from Samuel J. Barrows, and agreed in consideration of it to procure and insist upon the appointment of Barrows by the Excise Commissioners, and agreed, as a further consideration of it, to appoint a particular man as Excise Commissioner, for the purpose of enabling Barrows to retain the office of attorney for the Board; and in connection with that the Judge Advocate offered to produce to the witness the evidence in writing of the receipt of the $500 for the purpose indicated.

The witness indicating his desire to answer the question, the objection was waived.

I did draw up an appointment of myself as Attorney of that Board, and I obtained to that paper the signatures of Aaron W. Reynolds, Geo. F. Weaver and Samuel P. Lewis. They were the

Commissioners of Excise whom I had appointed. I never published that paper. Samuel J. Barrow was Attorney of that Board at the time that paper was signed. It was the duty of the Attorney of the Board to prosecute for violations of the liquor law; his sole duty was to prosecute men for the violations of the excise law. I do not know that Barrows was appointed Attorney of the Board at all in my place. I have no personal knowledge that a resolution of the board was passed appointing him.

The Judge Advocate here handed witness a check.

I received this check from Barrows; I deposited that check in the bank of T. O. Grannis.

The said check and deposit check were then offered in evidence by the Judge Advocate, as follows:

UTICA, *March* 22, 1865.

Utica City Bank—Pay to S. J. Barrows, *or order—bearer*—two hundred and forty-five dollars and forty-eight cents—Discount.

UTICA, *March* 22, 1865.

Deposited in T. O. Grannis & Co.'s Bank, Geo. W. Smith:

Bills	$254 00
Specie	52
Checks	245 48
	$500 00

Check was endorsed, S. J. BARROWS.

I received that check from Barrows; I received this check of Barrows in his office, with the remainder of the money stated in the deposit check; in consideration of this arrangement I gave him up that paper—the appointment—and allowed him to keep that office; I was to re-appoint a certain member of the board, but that was no part of the consideration; it was something stated subsequently; I know William B. Taylor and James G. French; they came to me and applied for that appointment; it was before I received that appointment myself; I did not offer to have him (French) appointed, or to use my influence to have him appointed, if he would give me a consideration of the division of the avails of this office; I did not receive a portion of $400 which Barrows paid previously to another person for this office; I never, subsequent to the receipt of this $500, became a party to an arrangement or understanding by which men were not to be prosecuted for a violation of the excise law, except upon consent of a certain individual.

The witness then went on to explain his conduct in the case of Norton, by stating that it had been the case in the courts of Oneida to allow prisoners to be let to bail, provided they would enlist in the army. It was the witness' impression, when he commenced giving testimony here, that Norton was taken out of jail upon the order of another judge, but he "seems to have been mistaken." He stated that the enlistment of Norton was by other parties; that he had no interest in the money whatever. The witness stated further, in explanation, that he obtained an appointment from the excise commissioners to do their business. He supposed the business to be worth a $1,000 a year, and he relinquished the position to Barrows upon his offering to pay him $500. He did not consider it a bribe; it was a mere business transaction.

Questions by the Judge Advocate.—There was but one attorney to the excise board at that time in Utica; he had only civil business to do; I do not understand that he was the only organ through which the board spoke in the way of prosecutions; if they prosecuted criminally, it would go into the hands of the district attorney.

Q. All the prosecuting which the board of excise do, takes place through the attorney of that board?

A. All their civil suits.

Judge Advocate.—Answer my question.

Judge Smith.—They do usually.

Judge Advocate.—Did you ever know an exception?

A. I do not know that I ever did. There was no other place to which suits brought in courts of justices of the peace of Oneida county were appealable except to me, as county judge, nor any place except the court of Oyer and Terminer in which indictments for violation of the liquor law were triable, besides the Court of Sessions, of which I was the chief judge.

Judge Smith, a witness for the defense, being re-called, desired to state in explanation:

I had entirely forgotten the giving of that order to produce Norton, and one of the main reasons why I had forgotten it, was that I supposed Norton was brought out on the order of another judge, and that I made no order in the matter. I knew that another judge had made an order, and on looking on the files where such orders are kept in the office of the jailor, I found such an order, and I wish to offer it in evidence here. It read as follows:

The People vs. *Chas. E. Norton:*

To the sheriff of Oneida county.—Bring before me Charles E. Norton, defendant in the above entitled case, for the purpose of letting him to bail. W. J. BACON.

UTICA, *December* 27*th*, 1864.

The office of the attorneyship of the board of excise is not an office created by law; the board of excise select their attorneys as they choose; there is no law upon that subject; I had nothing to do with the subsequent action of the board in appointing this man Barrows; I never requested Mr. Lewis or Mr. Reynolds to appoint him; I did not know that any action was taken upon it in that way until afterwards. I supposed that giving up the appointment I held would probably in fact restore him to the business he had been doing before; I do not think I knew of the order allowing three-eighths of the bounty to be assigned by the recruit before I left Elmira.

Q. By Judge Advocate: I got this order from the jail on Saturday last, from Mr. Barnes, the jailor; this man Norton was once brought up on this order; I did not understand that he was remanded by the judge; I suppose that he was taken back; I suppose that he was never brought out of jail to bail except upon my order; I cannot state a case where the Court of Oyer and Terminer ever admitted a man to bail upon condition that he would enlist in the army, either for burglary, larceny or passing counterfeit money; I only know what I have heard; I understood that that practice had prevailed in the Court of Oyer and Terminer; that it had the approval of the judge who held the sessions of that court, and I supposed in the case of Norton that I was not only bailing him under the special sanction of the superior judge who had been consulted upon it, but that it was in conformity with what had grown into custom in similar cases throughout the country; I think I got to Elmira on the 9th of March; I presume Major H. must have known on the 9th of March that such an order (regarding enlistments upon five-eighths bounty being paid, &c.) was issued on the 7th inst.

The court then adjourned until to-morrow at 10 o'clock A. M.

E.

FINDINGS OF THE COURT-MARTIAL AND SENTENCE.

The court-martial which tried Major John A. Haddock, found him guilty under the three charges presented against him, and under nearly all of the specifications under each charge.

I. The court pronounces him guilty of the first charge, to wit, violation of the ninety-ninth article of war.

Guilty of the first specification, namely, accepting from Aaron Richardson, a substitute and recruit broker, as a present and bribe to influence his official action, a valuable horse, harness, sleigh and robes.

Guilty of second specification, to wit, falsely recommending one Collins, a clerk, to draw papers in the provost marshal's office, with a view improperly to aid and assist said Richardson in carrying on the business of making money by furnishing men and procuring them to be mustered into the military service, and credits to be given on quotas in said western division.

Guilty of the third specification, to wit, in that with the same view and intent, he wrote to Lieut. Col. Poole, Acting Provost Marshal of Utica, and privily dispatched it, allowing recruits to assign not to exceed five-eighths of their local bounty.

Guilty of the fourth specification, in that while acting as such provost marshal general, he received and accepted as a present and bribe, to influence his official action, two thousand dollars in money, from one Aaron Richardson.

Guilty of the fifth specification, to wit, recommending the said Richardson, with a view improperly to assist him in filling quotas and obtaining credits in Oneida; and guilty under the sixth specification, to the extent of giving such recommendations for use in other districts.

Guilty of the seventh specification, to the extent that with intent to aid the said Aaron Richardson in procuring the acceptance and muster, in violation of law and regulations controlling enlistments, of men whom he presented to the provost marshal of the 21st district of the State of New York, and to assist the said Richardson in his business as a bounty broker, he wrote a letter to Capt. Crandall, in which he said:

"As regards the seventeen men delivered here, with only fifty dollars in their possession, much complaint was made by the commandant of the rendezvous camp. If the men, however, agreed

to go for fifty dollars each, there can be no just cause for complaint. It would probably be much better for the service if men would volunteer to go *for no money at all*, but influenced by patriotic motives."

Guilty of the eighth specification, to the extent that he did authorize and suggest to Captain Crandall, Provost Marshal, to muster men and send them forward, without five-eighths or three-eights, or any part whatever of the local bounty of such men being paid them, or sent forward with them, or in any manner retained for them or for the United States.

Guilty of the ninth specification, to the extent that he encouraged different provost marshals in the western division so to muster men in, without receiving the local bounty to which they were entitled.

Guilty under the tenth specification, as follows: In that he "agreed to furnish, and did furnish, privately, to one Aaron Richardson, in advance of the public or the local authorities being apprised or having knowledge thereof, statements of quotas, and of the arrangement and allowance of credits in the various subdistricts in the western division of New York, for the purpose and with the intent of enabling said Richardson to secure and obtain from local authorities, who were ignorant of the quotas and of the State credits, contracts to fill quotas and supposed quotas, and to obtain for so doing gross sums based upon exaggerated and mistaken estimates and expectations of the number of men required."

Guilty under specification eleventh, that he did keep back from the public and from the local authorities of the 21st district of New York, from the Provost Marshal of the same district, the true state of the credits due to said district and to the subdistricts thereof, to the end and with the intent that said Richardson might secure contracts to fill quotas, based upon exaggerated estimates of the number of men to be furnished, and did agree with said Richardson for a certain proportion of the profits of the transaction; and of the residue of the specification, except the averment of the time and place, not guilty.

Guilty under specification twelfth, in that he did agree to accept from said Richardson five thousand dollars in money as a bribe and present to said Major Haddock for acts done and to be done by him officially, in aid of said Richardson, in his business aforesaid.

Guilty under specification thirteenth, to the extent that he made appointments with persons engaged in the western division as

brokers of credits and bounties, and did meet them pursuant to said appointments for the purpose of aiding them in the said business of credits and quota brokerage, and of sharing their profits with them.

Of specifications fourteenth and fifteenth, not guilty.

Guilty of specification sixteenth, to wit: that he did corruptly agree with certain bounty brokers, and among others with Aaron Richardson, to grant favors and give aid officially to said brokers, in their business and schemes, respectively, and especially to said Richardson, for a consideration to be paid him for so doing, and also that he agreed to furnish timely information of quotas and credits; to cause credits after men were mustered in to be withheld, to the end that large profits might be realized and larger bounties be obtained by said brokers and said Richardson; to grant special facilities and give special orders and directions to Provost Marshals, for the purpose of assisting and abetting the operations of said brokers and of said Richardson, and to protect said brokers and said Richardson, and stand between them and the government of the United States.

Guilty of specification seventeenth, in corruptly agreeing to aid Richardson in his business as a broker of credits and bounties, and to share in the profits.

Not guilty of specification eighteenth, charging a like agreement with one Fiske.

Guilty of specification nineteenth, in that he did request and propose to Aaron Richardson, a recruit and credit broker, to send to him, said Major Haddock, money and presents, and did direct said Richardson to send the same through one Carter, a female whom he named, in order to guard against suspicion.

Guilty of specification twentieth, in that he took into the pretended employment of the United States, and placed or caused to be placed upon the pay-roll, and paid certain persons, to wit: one Mrs. Carter and one Morey, when, in truth, said persons were improperly and unnecessarily employed, and not employed in good faith to render service to the United States, but were employed and paid out of the public moneys, by said Major Haddock, for his own personal uses, and were in collusion with him, and he with them, in the receipt of unlawful gains, made out of assistance furnished by said Major Haddock, officially, in the business of putting in men to apply on quotas, and managing and obtaining credits.

Guilty of specification twenty-first, to the extent that he paid Mrs. Carter out of the public money when she rendered no service to the United States.

Not guilty under specifications twenty-second and twenty-third, in relation to recommending one William Barnes for a position under Capt. Scott, at Oswego.

Guilty of specification twenty-fourth, to wit: With intent improperly to aid and assist said Richardson in the business of securing contracts for filling quotas and obtaining credits, and making gains and profits as a bounty and recruit broker, and intending to secure to said Richardson special facilities in his schemes and business, did write and deliver to said Richardson, for the purpose of being shown to Capt. A. L. Scott, the Provost Marshal of the Twenty-second District of New York, a certain letter.

Not guilty of specification twenty-fifth, referring to alleged instructions to Major Beadle, Provost Marshal at Utica.

Guilty of specification twenty-sixth, as follows: In this, that the said Major John A. Haddock, Twelfth regiment V. R. C., and A. A. P. Marshal General of the Western Division of New York, in violation of his duty as such officer, and of the article of war, and of the other statutes and laws of the United States, did combine, conspire, confederate and collude with one George W. Smith, of the city of Utica, in the State of New York, and with others residing at Utica and elsewhere, to become pecuniarily interested in the business of recruiting in said division, and to cheat and defraud the people and local authorities of certain districts in said western division, and the recruits mustered in said districts, and the government, and to enter into corrupt complicity with bounty and recruit brokers to make gains and profits out of recruiting in said division, and to obtain and receive pecuniary and valuable inducement for granting special and illicit facilities and opportunities to bounty brokers and those engaged in recruiting and filling quotas, and pursuant to said conspiracy with said George W. Smith and others, residing at Utica and elsewhere, did become pecuniarily interested in the business of recruiting in said division, and did, together with said Smith and others residing at Utica and elsewhere, enter into corrupt complicity with bounty and recruit brokers for the purpose of making unlawful gains out of recruiting and filling quotas in said division, and did receive valuable inducements for granting special and illicit opportunities and facilities

to bounty and recruit brokers. This at Elmira, and also at Canandaigua, and also at Utica, and also at Rochester, and elsewhere, in said division, and on divers days between the first day of December, A. D. 1864, and the fifth day of April, A. D. 1865.

II. The Court also pronounces Major Haddock guilty under the second charge, to wit: "Violation of the 83d Article of War, and conduct unbecoming an officer and a gentleman."

And of the specifications under this charge guilty, as above stated.

III. The Court further find Major Haddock guilty under the third charge, to wit: "Fraud; malfeasance in office; abuse of official powers; complicity with bounty brokers in the Western Division of the State of New York; accepting presents and bribes; agreeing to accept presents and bribes; proposing to accept presents and bribes; being interested pecuniarily in recruiting and filling quotas in the Western Division of the State of New York.

The specifications under this charge are the same as above recited, and the findings are the same.

Sentence.

War Department, Adj't General's Office,
Washington, *September* 27, 1865.

In the case of Major John A. Haddock, Twelfth regiment Veteran Reserve Corps, Acting Assistant Provost Marshal General Western Division of the State of New York, tried before a General Court Marshal, which convened at Elmira, New York, May 22d, 1865, and at Syracuse, New York, July 6th, 1865, for "Violation of the 99th Article of War, in receiving presents and large sums of money as bribes, from substitute brokers, to influence his official action;" for "Violation of the 83d Article of War, and conduct unbecoming an officer and a gentleman," in writing certain communications for fraudulent purposes; also for "fraud, malfeasance in office, abuse of official powers, complicity with bounty brokers in the Western Division in the State of New York, accepting presents and bribes, proposing to accept presents and bribes, agreeing to accept presents and bribes, being interested pecuniarily in recruiting and filling quotas in the Western Division of the State of New York," the Court sentenced him "To be cashiered, and utterly disabled to have or to hold any office or employment in the service of the United States; that he pay a fine of ten thousand dollars to the United States, and be imprisoned at such place as the proper authority may designate until the said fine be paid—

the period of such imprisonment not, however to exceed five years; and in conformity to the 85th Article of War, the court add in and to the said sentence, that the crime, name, and place of abode of the said John A. Haddock, to wit, the town of Watertown, in the State of New York, and punishment of the said delinquent be published in the newspapers of the State of New York, from which particular State the said offender came, and where he usually resides;" which sentence was duly approved and ordered to be executed.

E. D. TOWNSEND.
Assistant Adjutant General.

REPORT

Of the committee on the Judiciary on so much of the Governor's Message as relates to the removal of the County Judge of Oneida county.

The committee on judiciary, to which was referred the message of his excellency the Governor, recommending the removal from office of the judge of Oneida county, do report:

That they do not know of any precedent for the proceedings in such a case, it being, as the committee is advised, entirely novel; that which most nearly resembles it is the trial before the Senate of a high official upon an impeachment for high crimes and misdemeanors; but that differs from the present proceeding in this; that in the trial of an impeachment both branches of the Legislature take a part—the Assembly as the accusers and prosecutors, and the Senate as the judges. In that case the form of proceeding has been settled in not infrequent cases. In the present case, however, as the Senate are the judges, no members of it can properly be the prosecutors; and as it is evidently necessary that the part of prosecutor must rest somewhere, in order to a vigorous and full presentation of the charges and of the evidence in support of them, so it is necessary that the complainant and his counsel should be admitted before the Senate or its committee, with the usual privileges of counsel. The like privilege must be awarded to the accused and his counsel.

It is evident, also, that in some manner the exact issues or points in dispute must be settle upon between the accused and his accusers before the investigation is commenced. It is also evident that it is proper, and will tend to abbreviate somewhat the proceedings, if the parties shall be required, before the investigation begins, to serve upon each other, and to leave with the committee

a written list of the witnesses whom they expect to call before the Senate or its committee.

It is also apparent that, before this can be done, the accused should have a copy of the complaint to which he is to answer.

Your committee are of the opinion that this investigation may be prosecuted in two methods: either by a committee of the Senate, who shall take the testimony upon the subject and report the same to the Senate with their opinion upon the case, or before the Senate. It is submitted that the choice of these two methods should be left to the accused, as the party the most intimately affected by any result which shall be arrived at.

Your committee, therefore, recommend that they be empowered to cause to be served upon the accused personally a copy of the complaint, with a notification that he is required to appear before the committee on day to be named in the notification, then and there to settle and agree upon the issues to be tried, and to receive and serve a written list of the witnesses to be examined, and to determine the time and manner at and in which the investigation shall proceed.

And to that end they propose the following:

Resolved, That the recommendation of the committee on the judiciary be adopted, and that the committee be instructed to proceed accordingly.

CHAS. J. FOLGER, *Chairman.*

SENATE CHAMBER, ALBANY, *February* 16, 1866.

WATERMAN & HUNT, Esqs., Utica:

I herewith hand you a copy of the report of the committee on judiciary. This report has been adopted with the resolution appended to it. By direction of that committee, I have notified Judge Smith to appear before the committee at the library room of the Senate at the Capitol on the first day of March, 1866, at four o'clock p. m., to settle the issues, to serve and receive lists of witnesses, and to determine the time, manner and place and the other matters pertaining to the initiation and conduct of the proceedings of the Senate on the investigation contemplated.

The committee will be pleased to have you, or whoever proposes to act as counsel for the complainant, attend at that time and place prepared to carry out the object of that meeting.

CHAS. J. FOLGER,

Ch'r Jud'y Com. Senate S. N. Y.

SENATE CHAMBER, ALBANY, *February* 16, 1866.

Hon. GEO. W. SMITH, *County Judge of Oneida Co.*:

Sir—I hand you herewith the following papers:

1st. Copy of the message of his Excellency the Governor.

2d. Copy of the complaint (or charges and specifications) therein mentioned.

3d. Copy of the report of the judiciary committee upon the two foregoing papers.

4th. Certified copy of a portion of the journal of the Senate of February 15, 1866.

In pursuance of the foregoing, and by order of the committee on judiciary, I respectfully notify you that you are required to appear in person before the committee at the Senate library room in the Capitol on the first day of March, 1866, at four o'clock p. m., then and there to settle the issues, to serve and receive lists of witnesses, and to determine the time, manner and place and the other matters pertaining to the initiation and conduct of the proceedings of the Senate on the investigation contemplated.

And I am, respectfully, your obedient servant,

CHAS. J. FOLGER,

Ch'n of Jud'y Com. Senate S. N. Y.

Charges preferred against the Hon. George W. Smith, County Judge of the county of Oneida, upon which his removal from office is demanded, in pursuance of article six, section eleven, of the Constitution of the State of New York.

1st. That the said George W. Smith, being such judge as aforesaid, and being authorized by the laws of the State of New York to decide upon the claims of citizens of said county to exemption from service in the militia of said State, did, in numerous instances, draw up as attorney or counsel for the applicants for such exemption the necessary papers to secure such exemption, and did receive pay therefor, as such attorney and counsel, knowing that the several cases so prepared were to come before him for examination or decision thereon, and afterwards passing upon and deciding the same in his judicial capacity. This was done at different times and dates during the years 1862, 1863 and 1864, at the city of Utica, in said county of Oneida, the precise dates and names being unknown.

2d. That the said George W. Smith, being such judge as aforesaid, and having one Henry T. Utley as a law partner, he, the said

Smith, being authorized by the laws of the State of New York to decide upon the claims of citizens of the said county of Oneida to exemption from service in the militia of said State, did suffer and permit the said Utley, as attorney and counsel for applicants for such exemption, to prepare the papers therefor, and to receive pay therefor, as such attorney and counsel, he being entitled to and and receiving, as a partner of the said Utley, a share of such fees and charges, and knowing that the several cases so prepared by the said Utley were to come before him for examination and decision thereon, and afterwards passing upon and deciding the same in his official capacity.

This done at Utica aforesaid, at different dates during the years 1862, 1863, 1864 and 1865, the precise dates and names being unknown.

3d. That the said George W. Smith, being such county judge as aforesaid, and as such, under the laws of this State, having the controlling voice in the appointment of Excise Commissioners in the said county of Oneida, did, with a view to his own personal advantage and gain, procure the appointment of Aaron W. Reynolds, George F. Weaver and Samuel P. Lewis as such commissioners; and did afterwards, to wit, in or about the month of February, A. D. 1865, with the same intent, procure from the commissioners so appointed, his own appointment, in writing, as the prosecuting attorney of the said board of commissioners, the same being a valuable office and appointment; that one Samuel J. Barrows, at and before such appointment of said Smith, held the said office under the appointment of the said board, and had discharged the duties thereof in a satisfactory manner; that the appointment of the said Smith was not published, but was kept secret; that afterwards and on or about the 22d day of March, A. D. 1865, the said Smith sold the said office and appointment to the said Barrows for the sum of $500, which was paid by the said Barrows and received by the said Smith therefor, and such appointment in writing given up to said Barrows and destroyed; that at the time of the payment of said money as aforesaid, and as a part of the same transaction, it was corruptly proposed and agreed by the said Smith that he would continue in office and re-appoint one of the said commissioners, viz: the said Weaver, for the purpose of securing the said office to the said Barrows; that it was understood by and between the said parties, that by the sale and giving up of said office and appointment by the said Smith, the said Barrows would

continue in said office and employment, and could secure his own re-appointment thereto, which has been done, and said Barrows did continue in said office, and has hitherto and still does so continue and has been re-appointed thereto. And it was further understood that said Smith was not thereafter to interfere with said Barrows in said office, but was to aid in continuing him therein, and securing the same to him.

4th. That the said George W. Smith, being such county judge, as aforesaid, and as such under the laws of this State, having the controlling voice in the appointment of excise commissioners in the said county of Oneida, did, with a view to his own personal advantage and gain, procure the appointment of Aaron W. Reynolds, George T. Weaver and Samuel P. Lewis as such commissioners; and did, afterwards, to wit, in or about the month of February, A. D. 1865, with the same intent procure from the commissioners, so appointed, his own appointment, in writing, as the prosecuting attorney of the said board of commissioners, the same being a valuable office and appointment. That the said Smith, just prior to his said appointment, and with a view to his own gain and advantage, did propose to one James G. French, an attorney and counsellor-at-law, residing at Utica in said county, and to one William B. Taylor, as a friend of said French, that he would procure the said appointment for him the said French, or would give him his influence as county judge in that behalf, provided and on condition that the said French would go into partnership with the said Smith in that business or the business pertaining to that office and appointment, and would accept for his services one-third of the emoluments or profits of the same and give to the said county judge two-thirds of such profits and emoluments, which proposition was rejected by said French. And, further, that, after the said county judge had received the said office or appointment for himself, he made substantially the same proposition to the said Samuel J. Barrows, before the sale of said office to him as in the last preceding charge specified and set forth.

5th. That at and before the time of the transaction, hereinafter stated and charged, one Henry T. Utley was the law partner of the said George W. Smith. That on or about the fifth day of January, A. D. 1865, one Charles E. Norton was confined in the county jail of Oneida county, upon a charge of grand larceny. That the said Smith, being the friend of one Major John A. Haddock, then the acting assistant provost marshal general of the

western district of New York, and, having authority in the premises, applied to and used his influence with the said Haddock to procure, and did procure from him a special order that the said Norton should be mustered into the military service of the United States, and that the bounty to which said Norton would become entitled on such muster in said county of Oneida, being the sum of six hundred dollars or over, should be paid to and retained by the said Utley, the law partner of said Smith. That upon procuring said order, and upon the application of the said Utley, the said county judge let the said Norton to bail, the said Utley becoming his surety, and thereupon the said Norton was mustered into the service of the United States, and his bounty, amounting to six hundred dollars, was paid to the said Utley. That it was understood and agreed between the parties to this transaction, that such bail bond was not to be enforced against said Utley, and that, in purauance of such understanding, the said county judge retained the same in his own possession and control, and did not file the same in the clerk's office of said county, nor deliver the same to the district attorney of said county, as by law he was required.

6th. That some time prior to the month of January, A. D. 1865, one John A. Haddock had been appointed to, and then held the office of Acting Assistant Provost Marshal General of the Western Division of the State of New York, with the rank of Major, and having his headquarters established at Elmira. That the said Haddock had long been the friend of and intimate with the said George W. Smith, and advised him of his expected appointment, and after it was obtained had a long interview with him at Utica in reference thereto. That at the same time one Aaron Richardson was a notorious substitute and bounty broker. That one John D. Collins, residing at Utica, and having a desk in the office of the said county judge, then and for a long time previous thereto, was employed by the said Richardson as his clerk, and to assist him in his aforesaid business. That with a view to the mutual and personal pecuniary, but corrupt and unlawful gain and advantage of the said Haddock, Richardson and Smith, and for the purpose of securing peculiar and special facilities and unfair and unlawful advantages to the said Richardson in his said business in Oneida county and elsewhere in the said western division, a corrupt and unlawful arrangement and combination was entered into by and between the said George W. Smith and the said Richardson and

the said Haddock, acting upon the solicitation and under the personal and official influence of said Smith, by which such peculiar and special facilities and improper and unlawful advantages were secured to said Richardson in his said business of recruiting and bounty brokerage. That among other things, the said Smith did, on or about the 8th or 9th day of January, A. D. 1865, at the request and on the behalf of the said Richardson, go to Elmira aforesaid, and did procure from the said Haddock two several letters to Lieutenant Colonel D. W. C. Poole, then Acting Provost Marshal at Utica, in the words and figures following, to wit:

HEADQUARTERS A. A. PROV. MARSHAL GEN. & SUPT.
OF VOL. RECRUITING SERVICE, WEST DIV. S. OF N. Y.,
ELMIRA, N. Y., *January* 9, 1865.

Lt. Colonel D. W. C. POOLE, *Acting Prov. Marshal, Utica N. Y.:*

Colonel—I have the honor to inform you that I have acquaintance with Mr. J. D. Collins, of Utica, and know him to be a fine clerk. You, unless good reasons are apparent to the contrary, treat enlistment papers made out under his direction and in his office, during the hurry of recruiting, as though made out by one of your enlisting clerks—taking care, however, to see that such papers are made out in conformity to law and regulations.

Very respectfully, your ob't servant,
JNO. A. HADDOCK,
Maj. and A. A. P. M. G.

HEADQUARTERS A. A. PROV. MARSHAL GEN. & SUPT.
OF VOL. RECRUITING SERVICE, WEST. DIV. S. OF N. Y.,
ELMIRA, N. Y., *January* 10, 1865.

Lt. Colonel POOLE, *Acting Provost Marshal, Utica, N. Y.:*

Colonel—The true construction of Order No. 23, Department of the East, dated March 25th, 1864, and promulgated from this office, with an intimation that the spirit of that order would govern me in passing upon cases arising in this Division, will be held by me to be that if recruits or substitutes are fully informed, by the Provost Marshal, of their rights as to local and government bounties, they may thereafter assign to any person such portion of their local bounty as they may elect, not exceeding five-eighths thereof. The Provost Marshal should take pains to inquire fully into bargains made with recruits and substitutes, and hold both parties to

a strict performance of their agreements, not forgetting that recruiting agents have their rights that should be respected as well as recruits or substitutes.

I am, Colonel, very respectfully: your ob't serv't,

(Signed) JNO. A. HADDOCK,

Major and A. A. P. M. G., W. Div. of N. Y.

That in further pursuance of such scheme and arrangement, said Richardson went himself to Elmira, starting on the same day with Smith, and passed him on the way, reaching Elmira in advance of Smith and advising said Haddock that he was comming and the purpose of his visit. That Haddock on that occasion gave to Richardson several letters to various provost marshals in his division, commending him to their confidence. That afterwards, and in pursuance of such corrupt scheme and arrangement, the said Richardson, at Canandaigua, on or about the 21st day of January, A. D. 1865, presented to said Haddock a valuable horse, cutter, harness and robes, of the value of $500 and upwards. That afterwards, and on or about the 25th day of the same month, he presented to said Haddock $2,000 in cash. That in further performance of said corrupt scheme, the said Haddock sent to the said Richardson at Utica, advice by telegraph as follows: On January 24th: "She will be there to-morrow; watch for her." On the same day: "It stands at 2,088." On January 25th: "She was sent to you yesterday. Has she come? Do you want another one for the others? I wrote you last night." That these telegrams were intended to advise said Richardson of the quota of the 21st congressional district, being said county of Oneida. That afterwards, and on the 30th day of January, A. D. 1865, the said Haddock gave to said Richardson a paper showing the surplus of the several sub-districts of said district, as shown by the report of quotas and credits to the 31st day of December, 1864. That at the same time the said Haddock gave to said Richardson a letter of that date to Captain Crandall, who had succeeded said Colonel Poole as provost marshall of said district. That said paper and said letter are in the words and figures following, viz:

"Surplus of sub-districts in the 21st congressional district, as shown by report of quotas and credits, dated December 31st, 1864:

Annsville	9
Augusta	1
Ava	3

Boonville	24
Bridgewater	9
Camden	2
Deerfield	4
Florence	2
Floyd	1
Kirkland	3
Lee	3
Marshall	5
New Hartford	2
Paris	2
Remsen	4
Rome	12
Steuben	1
Trenton	8
Utica, 1st ward	4
Utica, 3d ward	18
Utica, 4th ward	5
Utica, 5th ward	7
Utica, 6th ward	24
Utica, 7th ward	8
Vernon	1
Western	3
Westmoreland	1
Whitestown	20
	193
Oneida county at large	17
	210
Deficiency	4
	206

"ELMIRA, N. Y., *Jan.* 30, 1865.

Captain CRANDALL, *Provost Marshal*, Utica, N. Y.:

Captain—From my acquaintance with Mr. Aaron Richardson, of Albany, I am well convinced that he is a man of integrity, and that he will do as he agrees. Such men are very valuable in putting in men, as his acquaintance is very extensive and his resources

many. I hope you will grant him all reasonable indulgence. He is a man of property, and can back up his statements.

Very respectfully, your obedient servant,

(Signed) JOHN A. HADDOCK,

Major and A. A. P. M. G."

That at some time after the appointment of said Crandall as Provost Marshal at Utica, the said Richardson had deposited with him a large amount, to wit: twenty thousand dollars of the bonds of Oneida county as security either that the men enlisted by him would not desert, or that they should be credited to the said county or district; that these facts and others conected with the transactions between the said Haddock and the said Richardson, were communicated to and well known to the said Smith, who was, during this time, in correspondence with said Haddock, and in frequent personal communication with the said Richardson after his return from Elmira, and during the months of January and February, 1865; that afterwards, and on or about the third day of March, A. D. 1865, the said Smith again went to Elmira and saw Haddock, and became fully acquainted with all his transaction with the said Richardson, as hereinbefore set forth; that on that occasion he tried to procure from the said Haddock an order for the surrender of the said $20,000 of bonds so deposited as aforesaid by the said Richardson with said Haddock, and also bonds of other parties deposited in like manner and for the same purpose; that said Haddock on that occasion gave to his clerk, one S. Floyd Hoard, an order upon said Crandall for the delivery to him of the said bonds, and the said Hoard and said Smith on the evening of that day went from Elmira to Rochester, where the said Richardson had proposed to meet said Haddock at that time; that the said Smith and the said Hoard met Richardson the next morning, and that said Smith then endeavored to procure from the said Richardson the telegrams, letters and papers hereinbefore stated, and others tending to show the corrupt arrangement between said Haddock and said Richardson in relation to recruiting, and among other corrupt inducements thereto, assured him that said $20,000 of bonds for which said Hoard had an order, would if surrendered by said Crandall, be given up by said Haddock to Richardson; that immediately after his return to Utica the said Smith on the fifth or sixth day of March, at the request of said Richardson, returned to Elmira; that on this occasion said Smith took a written memorandum prepared by said Collins, the clerk of said

Richardson, containing several requests, to be presented to said Haddock on behalf of said Richardson, to wit (substantially):

1. To grant furloughs to three men put in by Richardson (and who were deserters.)

2. To send a guard to Utica.

3. To allow said Crandall to muster men for other districts.

4. To direct Crandall to give up the said $20,000 bonds to Richardson.

5. To have certain credits allowed to Richardson.

That before going to Elmira on this occasion, the said Smith received such memorandum in writing, and took it with him; that he there arranged at Elmira for a personal interview between the said Haddock and Richardson at some future day, which was afterwards arranged by telegraph by and between said Smith and Richardson, and took place at the Osborne House in Rochester on the tenth day of March thereafter; that the said Smith was there and occupied the same room with said Haddock; that on this occasion it was arranged between the said Haddock and Richardson that (among other things) said Richardson, in consideration of favors from said Haddock, was to send him by said Smith the sum of $5,000.

That said Smith and Richardson returned to Utica, and soon thereafter, to wit: On the 13th day of March the said Richardson, by the consent and with the knowledge of said Smith, caused a telegram to be sent from Rome to said Haddock, requesting him to order Major Beadle, then provost marshal at Utica, to muster men for Oswego, to which the following answer was returned, viz:

"ELMIRA, *March 10th*, 1865.

GEORGE W. SMITH, *County Judge.*

I have given directions as requested by you.

JNO. A. HADDOCK."

That afterwards, and on or about the 16th day of March, 1865, the said Richardson gave to said Smith, in his office, the sum of $5,000, in seven-thirty notes, to take to Haddock pursuant to the aforesaid arrangement at Rochester. That said Smith saw Haddock on the 18th day of March, and exhibited the said bonds to him, and that he had at the same time the aforesaid memorandum given him by said Collins at Utica. Afterwards another meeting was arranged by telegraph, and was had at Canandaigua between said Smith and Haddock on said Richardson's business.

Haddock had declined to receive the $5,000, and Smith had returned the money to Richardson.

The said Haddock had, besides the said telegrams and papers hereinbefore particularly referred to and set forth, sent to said Richardson various other letters and telegrams, tending to implicate him and furnish evidence of his misconduct in his said office, and to subject him to military censure and punishment. That the said Haddock desired to recover and suppress such papers and evidence. That he procured the said Smith to endeavor to recover the said papers from said Richardson. That said Smith at the time when he was pretending to act as the friend and counsel of said Richardson, was likewise acting for said Haddock, and on his retainer and employment in endeavoring to procure from said Richardson such papers with a view to suppress such evidence.

That for the services in behalf of said Richardson hereinbefore set forth, and in pursuance of the aforesaid scheme and arrangement, the said Smith demanded of the said Richardson the sum of two thousand dollars.

7th. That the said George W. Smith did, while holding said office at Utica in the said county, on or about the 16th day of March, 1865, receive from one Aaron Richardson, a person then engaged in the business of bounty broker, the sum of five thousand dollars in seven-thirty government notes, upon the understanding and for the purpose of offering the same to the said John A. Haddock, then Acting Assistant Provost Marshal General of the Western Division of New York, as a bribe for favors granted or to be granted to said Richardson, and did knowingly and corruptly bear and offer the said bribe to the said Haddock for the purpose aforesaid.

8th. That the said George W. Smith, being such county judge as aforesaid, did heretofore, to wit, on the 10th day of March, 1865, and at other times, at Utica aforesaid, and also at Rochester, endeavor to procure from the said Aaron Richardson certain letters and telegrams, addressed and sent to him, and certain other paper writings delivered to him by the said John A. Haddock, which papers tended to prove that the said Haddock had been guilty of misconduct and maladministration in his office of Acting Assistant Provost Marshal General of the Western Division of New York, with a view to suppress the evidence contained in said papers and to screen said Haddock from just censure and punishment, he, the

said Smith, well knowing the character and general contents of said papers and the purposes for which their return was sought.

9th. That the said George W. Smith, being county judge as aforesaid, habitually neglected the duties of said office, and was unreasonably absent from his office, without any sufficient reason or excuse, and that he was engaged, either for himself or others, in the business of furnishing recruits and substitutes, and bounty brokerage, a business inconsistent with the proper discharge of the duties of his place, and to the great loss and detriment of persons having business before him as county judge, or in the county court of said county; that such neglect has extended through the whole of his term as county judge.

All which it is humbly submitted is in derogation of the duties of the said Smith, as county judge as aforesaid, and tends to bring the said office into public contempt and disgrace, and is improper and unlawful and of manifest public injury, and authorizes and requires the removal of the said Smith from his aforesaid office, pursuant to the aforesaid provisions of the Constitution of this State.

In the Senate of the State of New York:

In the matter of charges preferred, &c., against Geo. W. Smith, County Judge of Oneida county.

The answer of George W. Smith, county judge of Oneida county, to the charges preferred against him, shows to this honorable Senate:

This respondent in his proper person, comes before this honorable Senate, and, protesting that there is no high crime, misdemeanor or any offense whatever particularly or otherwise alleged in the charges aforesaid to which he is or can be bound by law to make answer unto, and saving to himself, now and at all times hereafter, all benefit of exception to the insufficiency of the said charges, and of each of them, and to the defects therein appearing as point of law or otherwise, and also saving to himself, now and at all times hereafter, all benefit of exception to the jurisdiction of this honorable Senate to try and determine said charges, and protesting also that he ought not to be injured in any manner by any words, or by any want of form in this his answer, says that he denies each and every allegation in the said charges contained, and the view, design and intention therein charged, and avers that all he did in the premises was done in the faithful and conscien

tious discharge of his official duty, and his duty as an attorney at law, as he believed and he still confidently believes, warranted and supported by the Constitution and laws of the land; and therefore this respondent, for a plea to said charges, saith that he is not guilty as in and by said charges it is alleged.

GEO. W. SMITH.

To the Senate:

The Judiciary Committee, to whom was referred the message of the Governor, recommending the removal from his office of Geo. W. Smith, County Judge of Oneida County, do report—

That they have been attended by the said official in person and with his counsel, and by counsel in behalf of the people.

That specifications have been filed and served of the charges against the said County Judge, and that he has served and filed his answer thereto, which specifications and answer are attached hereto.

That the said Geo. W. Smith elects to be tried upon the charges against him before the Senate rather than before its Committee, and that the taking the testimony of counsel and all other proceedings be had before the Senate.

Your Committe, thereforee, submit the following resolution:

Resolved, That the Committee on the Judiciary be discharged from the further consideration of this matter, and that the same be submitted to the Senate for its action.

Dated March 6th, 1866. CHAS. J. FOLGER.

Chairman.

State of New York.

No. 99.

IN SENATE,

June 12, 1866.

PROCEEDINGS

ON THE HEARING OF THE DEFENSE OF GEORGE W. SMITH, COUNTY JUDGE OF ONEIDA COUNTY, TO CHARGES SUBMITTED TO THE SENATE BY THE GOVERNOR, WITH A RECOMMENDATION FOR THE REMOVAL FROM OFFICE OF THE SAID COUNTY JUDGE.

SENATE CHAMBER,
ALBANY, *June* 12, 1866.

The Senate convened at eleven o'clock—the Hon. THOMAS G. ALVORD, Lieutenant-Governor and President of the Senate, in the chair.

The clerk, JAMES TERWILLIGER, Esq., proceeded to read the proclamation of his Excellency the Governor, under which the Senate had convened, in words as follows:

STATE OF NEW YORK, EXECUTIVE DEPARTMENT,
ALBANY, *April* 21, 1866.

Whereas, the Senate of the State of New York, by resolution bearing date on the twenty-third day of March, A. D. 1866, requested me to call the Senate together in extra session, at the Capitol, on the second Tuesday of June following, for the purpose of proceeding to the trial of the charges against the County Judge of Oneida county:

Now therefore, I, Reuben E. Fenton, Governor of the State of New York, by virtue of the authority conferred by section 4, article 4, of the Constitution of said State, do order and proclaim that the Senate of the State of New York do convene in extra session, at the Senate Chamber, in the city of Albany, on the SECOND TUESDAY OF JUNE, A. D. 1866, at 11 o'clock in

the forenoon, for the purpose of proceeding to the trial of the charges against the County Judge of Oneida county.

In witness whereof, I have hereunto signed my name and affixed the Privy Seal of the State, at the city of Albany, this [L. S.] twenty-first day of April, in the year of our Lord one thousand eight hundred and sixty-six.

R. E. FENTON.

By the Governor:

GEO. S. HASTINGS, Private Secretary.

The Clerk proceeded to call the roll, when the following Senators were found to be present:

Messrs. ANDREWS, CHAMBERS, COLLINS, C. G. CORNELL, CROWLEY, FOLGER, GIBSON, GODARD, HAYT, HUMPHREY, KLINE, LA BAU, LENT, H. C. MURPHY, T. MURPHY, PIERSON, PLATT, STANFORD, SUTHERLAND, WHITE, WILBOR, WILLIAMS and WOLCOTT—23.

The PRESIDENT announced a quorum present.

MR. FOLGER: As this is the first hearing of the kind which has taken place in this State since the adoption of the new Constitution, and as the Senate, therefore, is entirely without rules of procedure and precedents by which to be guided, I move the adoption of the following resolution:

Resolved, That a committee be appointed, or some standing committee of the Senate be instructed to prepare and report to the Senate rules for its guidance in the pending proceedings, and that a recess of the Senate be taken for that report to be prepared.

MR. WILLIAMS: I would move to make the resolution so definite in its terms as to designate the committee on the judiciary as the one to perform the duty.

The amendment being accepted by the mover, the resolution was adopted.

MR. HAYT moved that the Senate take a recess until four o'clock.

Which was carried.

The committee took a recess until four o'clock P. M.

AFTERNOON SESSION.

On reassembling, Messrs. CAMPBELL, O'DONNELL and PARSONS appeared and took their seats.

The PRESIDENT announced the following appointments:

Doorkeeper—H. B. YOUNG.
Janitor—NATHANIEL GOODWIN.
Stenographer—EDWARD F. UNDERHILL.
Messengers—BERNARD SCHMIDT, CHRISTOPHER VAN VALKENBURGH.

The PRESIDENT announced the reception of a communication from Hon. D. S. BENNETT, Senator from the 31st district, announcing his necessary absence on account of illness in his family, and requesting from the Senate a leave of absence.

No objection being made the PRESIDENT declared that leave was granted.

EDWARD F. UNDERHILL was then duly sworn by the President as stenographer.

Mr. FOLGER, from the committee on the judiciary, reported the following rules for the guidance of the Senate during the pending proceedings:

RULE I.

The Senate shall, until otherwise ordered, meet in the Senate Chamber daily at 9 o'clock A. M., and continue in session until 2 o'clock P. M., at which hour a recess shall be had until 4 o'clock P. M., when it shall meet again and continue in session until 7 o'clock P. M., when it shall adjourn.

But this rule may be changed from time to time by the Senate without previous notice being given; or for want of witnesses, or other reasons, the Senate may take a recess or adjourn at a different hour.

RULE II.

At its meetings at which rules are adopted, or at the next meeting thereafter the charges against the accused and his answer thereto shall be read by the clerk. The charges and answer to be read are those which were agreed to before the Committee on Judiciary, at the last session of the Legislature. The accused shall be called, and if he appears shall be assigned a place within the bar, with such counsel as he shall select to aid him in his defense. The counsel for the prosecution shall also have a place assigned to them within the bar; and the prosecution (unless otherwise ordered by the Senate), shall be represented by the counsel who have already appeared in the matter.

RULE III.

The prosecution and the accused shall be entitled to the process of the Senate to compel the attendance of witnesses, which process shall be signed by the Clerk and sealed with the seal of the Senate, and tested in the name of the Lieutenant Governor and the President of the Senate, and may be in the form following:

"THE PEOPLE OF THE STATE OF NEW YORK: By the grace of God, free and independent: To

GREETING:

You and each of you are hereby commanded and required, that, laying aside all other business, and all pretenses and excuses whatsoever, you be and appear, in your own proper persons, before our Senate, at the Senate chamber at the capitol, in the city of Albany, on the day of , A. D. 1866, at o'clock, M. of that day, to be examined as witnesses, and to testify the truth and give evidence *on our behalf*, (or on behalf of the defendant hereinafter named,) concerning certain charges then and there to be tried and determined, before our Senate of our said State, which have been made against George W. Smith, the county judge of Oneida county, and upon which our Governor of our said State has recommended to our Senate aforesaid, that the said George W. Smith be removed from his said office of county judge of Oneida county. And hereof fail not at your peril.

Witness, the Hon. Thomas G. Alvord, the Lieutenant-Governor of the State of New York, and the President of the Senate thereof, this day of A. D. 1866.

[L. S.]

Attest,

Clerk of the Senate.

And such subpœna may be served and returned in the manner usual in Courts of Record of this State.

RULE IV.

All motions made by Senators, or by the counsel for the prosecution or for the accused, shall be addressed to the President of the Senate; and if he shall require, they shall be reduced to writing and read at the desk of the clerk; and the decision thereof, and of all points and objections raised by the counsel, shall be had after a hearing of counsel if they desire it, and by the vote of the Senate, which, when demanded by any Senator, shall be taken by ayes and nays. And the motions, points or objections shall be entered upon the records of the Senate, together with the decision thereon. The decision thereof shall be had without debate, unless a Senator shall desire debate, when, on motion to that end, if it shall be adopted by the Senate; the chamber shall be cleared of all but privileged persons, and discussion shall be had in private; and the decision arrived at shall be publicly announced by the President of the Senate.

RULE V.

Each witness shall be, as he is called, sworn or affirmed, by the clerk, in substantially the following form:

You do solemnly swear (*or affirm*), that the evidence which you shall give upon this hearing upon certain charges preferred against George W. Smith, county judge of Oneida county, and upon which his removal from that office has been recommended by the Governor, shall be the truth, the whole truth, and nothing but the truth, so help you God (or this you affirm).

All the rules legal and usual in courts of record of this State in regard to the introduction of evidence and the examination and cross examination of witnesses, must be observed.

RULE VI.

If a member of the Senate shall be called as a witness, he shall be sworn or affirmed, and give his testimony standing in his place.

RULE VII.

The final judgment of the Senate upon the charges preferred, shall be taken by the President of the Senate, who upon each one of the charges, as it shall be separately read by the clerk, shall with its number, propose to each Senator in the order in which his name stands upon the division list, the question, "Senator, how say you, is the first (or second or whatever) item of the charges preferred against the accused, proven?" Each Senator when so questioned, shall rise in his place and answer "proven" or "not proven," and when the division list of the Senate shall have been gone through with upon each charge, the result upon each charge shall be announced, and shall be entered upon the records of the Senate. If a majority shall agree on the finding and proven upon any one or more of the items of said charges, the President shall in the same manner put, and the Senators shall in the same manner answer the further question, "shall George W. Smith be removed from his office of County Judge of Oneida county, for the cause stated in the item (or items) of the charges preferred against him which you have found proven." And the final judgment of the Senate shall be certified to the Governor by the President and Clerk of the Senate.

RULE VIII.

The president of the Senate shall employ a competent stenographer and assistants to take the oral testimony, and shall procure

it to be printed from day to day for the use of the Senate and counsel. At the opening of the Senate on the day after any part of the printed report of the testimony shall be brought in, any member of the Senate, or either of the counsel, may move to correct the same in any particular, to be then stated in writing. Such stenographer and assistants shall first be sworn faithfully to perform their duties as such.

RULE IX.

The clerk shall keep a book of records of the proceedings, orders and judgments of this Senate, and the ayes and nays upon every question in that way decided.

RULE X.

The president of the Senate shall direct all necessary preparations for the Senate chamber and all forms of proceeding not provided for in these rules and not otherwise ordered.

On motion, the report of the committee was adopted.

The clerk then called the accused, George W. Smith, who appeared within the bar with his counsel, Ira Shafer and Henry Smith, Esqs., of the city of Albany.

Charles B. Sedgwick and Daniel Waterman, jr., Esqs., appeared for the prosecution.

The clerk then proceeded, as preliminary to reading the charges against the accused, to read the communication of his Excellency the Governor, in words as follows:

STATE OF NEW YORK:
EXECUTIVE DEPARTMENT,
ALBANY, *February* 14, 1866.

To the Senate:

I respectfully transmit herewith charges and specifications presented to me, alleging official misconduct on the part of George W. Smith, county judge of Oneida county, with petitions accompanying the same, and I recommend that inquiry as to the truth of the charges be immediately made in accordance with the provisions of section eleven, article six of the Constitution.

This section does not clearly define the details of procedure prior to final action upon the question of the removal of judicial officers, and there are no precedents within my knowledge to guide the action of the Senate in this instance. I have presumed, however, to refer the entire case for your consideration, without

any preliminary examination on my part, with a view of forming correct conclusions as to the guilt of the party charged with malversation in office, or learning his defense, believing that this proceeding is wholly within your jurisdiction.

In my judgment this section of the Constitution, by reasonable construction, invests the Governor with the duty of making a recommendation based upon an *ex parte* presentation of the case, and this course would seem essential to confer jurisdiction upon your body.

I do, therefore, recommend that the said George W. Smith be removed from his said office, if in the judgment of the Senate he shall, upon a full and fair investigation, be convicted of the charges made against him. R. E. FENTON.

The reading being concluded, Mr. SHAFER in behalf of the respondent said:

I am instructed by my associate and by the respondent to present for the consideration of the Senate, at this time, a question which affects its power and jurisdiction to proceed to investigate and determine the charges that accompany the message which has just been read. As all the members of the Senate may not be entirely familiar with the history of this case on the reference of that message to the committee on the judiciary and the charges accompanying it, I beg leave to briefly state the proceedings that were had before that committee when the message was received from his Excellency. Of course I can only speak of proceedings that took place in the presence of the counsel for the respondent, upon the suggestion on the part of his counsel that by reason of matters contained in the message, neither the committee nor the Senate had jurisdiction to proceed to investigate and determine the charges. True, this matter was not argued at any length by the counsel for the respondent, nor was there any argument on the part of those who claim that the jurisdiction exists. Hence, the matter did no[illegible] probably receive at the hands of the judiciary committee the cor[illegible]deration which a question of this magnitude would seem to dem[illegible] Whatever did occur was in a conversational way and n[illegible] the expression of a deliberate judgment by which the co[illegible]ittee would feel bound. Of course, if the case had been fully [illegible]esented and argued, and they had had before them the prece[illegible]nts which have since been ascertained and examined, and ha[illegible] determined that they possessed jurisdiction, it would be wi[illegible] some hesitation that I would now trouble the Senate with our views. It

is all important in this case, the first case of the kind under the Constitution of 1846, that the initial step should be right. To the end that the time of the Senate and of the respondent may not be unnecessarily wasted, it is vitally important to determine whether you have any power to proceed any further in this matter; for, I need not say to this intelligent body, if you are without power, authority or jurisdiction, whatever you may do is null and void, and cannot affect the respondent or any party to it. The Constitution, (section 11, article VI.), provides that the Senate "may remove" a class of officers, among whom is a county judge, "on the recommendation of the Governor." Now, to fully understand the meaning of this provision, and the intent of the framers of the Constitution, we must recur for a moment to the history of impeachments as they have existed in this State, and it may not be unprofitable to refer to impeachments as they have existed in England. In England, as every one who is familiar with the question at all is aware, the process of impeachment is resorted to as well to remove officers from office for official misconduct as to punish for crime. Peer as well as commoner is subject to impeachment for official misconduct, and is subject to impeachment for high crimes and misdemeanors not in any way relating to his office. There is that distinction between impeachments in the mother country; in the United States and in this State. Here the process is resorted to for the mere purpose of removing an incumbent from office. It has never been resorted to for the purpose of punishing a person alleged to be guilty of a crime in no way connected with his office. I state this, briefly, because there are precedents in England which hold the precise doctrine I have stated that they may punish as well for that as other offenses. In order to understand the full significance of the provision of the Constitution of 1846 which is relied upon in this proceeding, it is necessary that we refer to the Constitution of 1777. Section 33 of the Constitution of 1777 invested the representatives of the people Assembly with the power of impeaching all officers of the State for *mal* and *corrupt* conduct in their respective offices. A judgment could not extend any further than a removal from office, and a disqualification to hold or enjoy any place of honor, trust, or profit under the State. But the party convicted was, nevertheless, liable and subject to indictment, trial, judgment, and punishment according to the laws of the land. The Constitution of 1777 did not contain any provision authorizing the removal of judicial

officers of courts of record by any other mode than impeachment. By article V, sections 1 and 2 of the Constitution of 1822, the power of impeaching all civil officers for mal and corrupt conduct in office, and for high crimes and misdemeanors was vested in the Assembly. That is the first time that the term "high crimes and misdemeanors" occurs in the organic law of our State. The organization of the court and the mode of trial and judgment, under the Constitution of 1822, were the same as provided under the Constitution of 1777. Article IV, section 6 of the Constitution of 1822 provides that judges of the county courts may be removed by the Senate, on the recommendation of the Governor, for causes to be stated in such recommendation. I will remark, *en passant*, though the Senate is probably familiar with the fact, that county judges, then, were nominated by the Governor, and, by and with the advice and consent of the Senate, were appointed; so that there seemed to be some fitness in providing that, upon the recommendation of the high officer who had nominated him, by the body which had appointed him, the incumbent might be removed. Section 7 of article IV of the same Constitution provided for the appointment of all judicial officers by the Governor, with the consent of the Senate, except justices of the peace. Article VI and section 1 of the Constitution of 1846 provides that the Assembly shall have the power of impeachment by the vote of all the members elected. The court for the trial of impeachment shall be composed of the President of the Senate, the Senators, or a major part of them, and the Judges of the Court of Appeals, or a major part of them. In other respects, the provisions of the Constitution of 1846, in respect to trial and punishment, are like those of the Constitution of 1822. I will remark here, in the first place, that nowhere in the Constitution of 1846 is there any definition of an impeachment offense; and secondly, there is no designation in the Constitution of 1846 of the persons who are liable to impeachment, except as it may be inferred from the judgment which the first section of article VI provides, to wit, judgment of removal from office, thereby holding that the process of impeachment can only be resorted to as against a public officer; for I take it that it will nowhere be contended that a process of impeachment can be resorted to for the punishment of crime. It is at war with the whole theory of our Constitution and the practice of our courts hitherto, that any such process can be resorted to for any such purpose. Section 11 of the same article

declares that justices of the Supreme Court and judges of the Court of Appeals may be removed by concurrent resolutions of both Houses of the Legislature, if two-thirds of all the members elected to the Assembly and a majority of all the members elected to the Senate concur therein. The same section provides that a class of judicial officers, including county judges, may be removed by the Senate, on the recommendation of the Governor, "but no removal shall be made by virtue of this section, unless the cause thereof be entered on the journals, nor unless the party complained of shall have been served with a copy of the complaint against him, and shall have had an opportunity to be heard in his defense." It will not be contended, we apprehend, that in the cases provided for in section 11 of article VI. the mode of removal therein designated is exclusive. I speak now as well of the justices of the Supreme Court and the judges of the Court of Appeals as of the judges of the County Court. We suppose there cannot be any doubt about the proposition that instead of proceeding against the judicial officers mentioned in section 11, as therein specified, to wit: in the case of the justices of the Supreme Court and the Court of Appeals, under concurrent resolution, and in the other case by the Senate, upon the recommendation of the Governor, it would be competent for the Assembly to impeach and the court for the trial of impeachments to try the impeachment, as provided in section 1, artice VI. Let me not be misunderstood. Section 1 of article VI provides for the impeachment of a class of officers not named nor designated in any way or form, or indicated in any way or form except as the judgment prescribed by that article declares that they shall be subject to removal from office, thereby implying that none but officers are subject to impeachment. What I aver is that the power to remove judges of the Court of Appeals and justices of the Supreme Court and county judges, by this process, is concurrent with the power on the part of the Assembly to impeach. In other words, the county judges are liable to be removed by impeachment if the Assembly see fit to adopt that course on the prosecution, rather than to submit charges to the executive. We say that the remedies provided in section 1 of article VI, and those contained in section 11 of the same article, are concurrent and not exclusive. Justices of the Supreme Court and judges of the Court of Appeals may, by concurrent resolution, be removed from office, as specified in section 11, for the same causes, and the same causes

only as would justify their impeachment, trial, conviction and punishment under section 1. Why is this so? If a judge of the Court of Appeals or a justice of the Supreme Court is removed by concurrent resolution, it must be for official misconduct. If he is impeached by process of impeachment on the part of the Assembly and is convicted on trial in the court for the trial of impeachments, the judge is removed from office; and there may be superadded a disqualification to hold office, and the party be liable to punishment as in other cases. So, a county judge may be removed by the Senate, on the recommendation of the Governor, for the same cause as would call for an impeachment by the Assembly. There is nothing in the Constitution, section 1, article VI, which provides what is an impeachable offense, nor is there in section 11 of article VI, anything which provides for what cause a county judge may be removed. In the one case he can be impeached; in the other he may be removed. In the one case the Assembly impeaches and the court for the trial of impeachments tries, and in the other the Governor recommends and the Senate tries. In both cases the end is the same. In neither case does the Constitution prescribe for what offense a party may be removed. From these propositions we deduce the following conclusions: *First*, the Governor must recommend the removal of the respondent; *second*, the removal must be for cause; *third*, the cause of removal must be such as would justify the impeachment of the respondent. We say that the Governor has not recommended the removal of the respondent from office. If we are right in supposing he has failed to recommend his removal—if we are right in supposing that there is this jurisdictional question, and that he has failed, you have no more power to proceed in the premises than I have, and whatever may be your judgment, it is void and futile as any act which I might assume to do without legal authority or power to perform. We say that the Governor must recommend the removal of the respondent. Now if I have succeeded in establishing the proposition, that the process of impeachment and the process of removal are concurrent, then it is entirely clear that some prior action must be had by some co-ordinate branch of the Government, to remove the party from office. We suppose it is so perfectly plain that it is not possible for the simplest mind to fail to comprehend it, that when the Constitution provides that the Governor must recommend the removal of a party from office, it must be done

after deliberation, after examination, and after decision on the part of his Excellency. Take this case. Although we have no occasion to find fault with his Excellency, the Governor, yet he has exhibited in this case a mistaken kindness, which has proved disastrous to the respondent. It is possible that the Governor has failed to examine the question, because he did not desire that the Senate should be influenced by any judgment he might pronounce. He tells us, in his message, that he has not investigated in any particular whatever, to determine either the truth or the falsity of these charges. He tells us they have made no impression upon his mind—that it is as blank upon that subject as is this white sheet of paper before me. He says he has no impression as to the guilt or innocence of the respondent, and further, that he has never heard his defense. Yet, with a mistaken kindness towards us, he sends that message to this body; it is placed upon your records; it goes forth to the world accompanied with what? a recommendation of removal from office? Not at all. It would seem as though the Governor thought section 11, art. VI, authorized you to make inquiry, for he recommends, that the Senate inquire as to the truth of these charges, and if, after inquiry into this case, they shall find he is guilty, then that he be removed. Let me quote from the message:

"I recommend that inquiry as to the truth of the charges be immediately made in accordance with the provisions of section 11, art. VI, of the Constitution."—What further does he say?—"I have presumed, however, to refer the entire case for your consideration, without any preliminary examination on my part, with a view of forming correct conclusions as to the guilt of the party charged with malversation in office, or learning his defense, believing that this proceeding is wholly within your jurisdiction." In other words, he says, "I think all that is necessary for me to do, is to make some intimation to the Senate that charges of this character have been preferred, and that it is within the province and jurisdiction of the Senate as a body having original jurisdiction in the matter, to go on and determine the truth or falsity of the charges." The Governor, in theory and in practice, is supposed to be the very embodiment of intelligence, fairness, justice and honesty. The Constitution has invested him, not only with the power, but has made it his duty, that before a high public officer, one as honored as any one around this circle, is accused in the manner in which this respondent is ac-

cused, an examination shall be institted by him. Though it it does not express it in words, the Costitution means this, that from your high position, your exaltd character, your known intelligence and your conceded honest, you are expected to sit down and examine these charges, andif they are false or not well founded, to dismiss them, or if, aer exercising your honest judgment, according to the best of yor ability, you are satisfied of his guilt, you will recommend to aco-ordinate branch of the Government his removal. The Governr is not a mere puppet—a mere child—a mere ministerial offier through whom charges are to go forth. It is upon him ests the responsibility of taking the initiative in proceedings o this character. If that is not so, if he is not bound to make thisrecommendation, then this message to you is entirely worthless. ou will look in vain for any provision in the Constitution authorizig the Senate, on their own motion, to institute proceedings of thi character. It must come through the channel which we have sggested. Now, I will not dwell longer upon this branch of the ase, but will leave my associate to express more in detail our viws. But I desire to read from Story's Commentaries on the Castitution, where he speaks on a point analogous to this. He ques this clause from the Constitution of the United States: "H (the President) shall have power, by and with the advice and aisent of the Senate," to do certain things. In speaking of the rponsibility of the President and the Senate, Mr. Justice Story say: "Happily this difficult task has been achieved by the Constitutio The President is to nominate, and thereby has the sole powero select for office; but his nomination cannot confer office unlo approved by a majority of the Senate." Here the Governor is 1 recommend, but his recommendation cannot remove from office ithout the concurrence of the Senate. The learned commentator ys, speaking of the President and the Senate: "His responsibilit and theirs is thus complete and distinct!" Here, too, the respsibility of the Governor is a distinct one. If he assumes to say at this man is guilty, he does that upon his responsibility. You re in no way responsible for it. If charges may be presented tothe Governor, and he shuffle them off upon the Senate without amination, then he can say I have no responsibility in this maer—I have not investigated them, nor recommended the remval—the Senate must assume that responsibility. If this proces can be resorted to, and a respondent, who is entitled to theoncurrent judgment of two

branches of the Government, can thus be removed, practically, the Senate alone can remove him. "His responsibility and theirs is thus complete and distinct," says Judge Story. That is the language used in reference to the President and Senate. Here the Governor shall recommend and you shall concur. The duties are as distinct as the distinction between day and night, and yet one branch has, unintentionally of course, entirely failed to discharge its duty. Out of mistaken kindness towards the respondent, his Excellency has failed to make any accusation. I need not say that when charges of this kind are bruited forth, even though his Excellency says he knows nothing of their truth or falsity, and has no impression of the guilt or innocence of the respondent, whatever may be the result of the trial, an injury has been done which can never be repaired; for the news of his acquittal will not travel as fast as the news of his accusation.

Mr. SEDGWICK: I think a very simple examination of the provisions of the Constitution will serve to show the fallacy of the argument upon the other side, and I shall content myself with a very brief and simple statement in regard to it. By the Constitution of 1846 there are two modes provided by which judicial officers can be removed. The one is by process of impeachment, the other by recommendation of the Governor and a trial by the Senate. In the first case, the impeachment of a judicial officer,—he may be not only removed from office, but he may be punished, if he is found guilty, after trial, of an impeachable offense. He may not only lose his office, but he may be disqualified from holding office thereafter. That is impeachment. I will refer to the section in a moment to contrast it with the section under which this proceeding is held, to wit: a proceeding for the removal, only, of a judicial officer, which can not be followed by the infliction of any judgment save that of removal, or of any penalty whatever except the loss of office. I will refer to the section in the Constitution. The first section of article VI in respect to impeachment says:

"The Assembly shall have the power of impeachment, by the vote of the majority of all the members elected. The court for the trial of impeachments shall be composed of the President of the Senate, the Senators, or a major part of them, and the judges of the Court of Appeals, or the major part of them. On the trial of an impeachment against the Governor, the Lieutenant-Governor shall not act as a member of the court. No judicial officer shall

exercise his office, after he shall have been impeached, until he shall have been acquitted."

And there is one distinction between the process of impeachment of judicial officers and the process of a recommendation for their removal under the other clause of the Constitution. In one case, they may not exercise their office during the pendency of the impeachment; in the other, they may, until a trial and judgment of the Senate has followed the recommendation of the Governor and the removal is complete. This also shows, although no direct statement is made of who can be impeached, that the process of impeachment reaches all judicial officers there within its reach.

—"Before the trial of an impeachment, the members of the court shall take an oath or affirmation, truly and impartially to try the impeachment according to evidence; and no person shall be convicted without the concurrence of two-thirds of the members present. Judgment in cases of impeachment shall not extend further than to removal from office, and disqualification to hold and enjoy any office of honor, trust or profit, under this State; but the party impeached shall be liable to indictment and punishment according to law."

That is the provision of the Constitution upon the subject of impeachment. It provides for a different accuser, to wit: the members of the lower House of the Legislature of the State. It provides for a different court, to wit: the Court of Appeals, sitting in connection with the Senate; it provides a different punishment; it provides that the person who is accused by this branch of the Legislature shall thereby be disqualified from exercising the duties of his office before trial; it provides punishment in addition to removal from office, and also, that this punishment shall not prevent his indictment in the courts of law, or his punishment there for any indictable offense for which he may be removed. Now turn to the other section and notice the difference. Section 11, article VI, reads thus:

"Justices of the Supreme Court and judges of the Court of Appeals, may be removed by concurrent resolution of both Houses of the Legislature, if two-thirds of all the members elected to the Assembly, and a majority of all the members elected to the Senate, concur therein."

That is a provision for removal upon Legislative address, as it is termed—the concurrent recommendation of both Houses of

the Legislature. It applies only to the judges of the Supreme Court and the Court of Appeals. But further:

—"All judicial officers, except those mentioned in this section, and except justices of the peace, and judges and justices of inferior courts not of record, may be removed by the Senate on the recommendation of the Governor; but no removal shall be made by virtue of this section, unless the cause thereof be entered on the journals, nor unless the party complained of shall be served with a copy of the complaint against him, and shall have had an opportunity of being heard in his defense. On the question of removal the ayes and noes shall be entered on the journal."

Now, an examination of this clause is a complete answer to all the suggestions upon the other side. If I understand the message of the Governor, it recommends that this judge be removed from office distinctly. It is not necessary, nor is there any provision in this section that looks to the necessity or implies the necessity in any way or to any extent whatever, that a trial and examination shall be had by the Governor—none whatever, any more than there is that a person whom he recommends for an office shall first be tried by the Governor as to his fitness and qualifications, and that the Senate has no power to act upon his nomination for an office without he says he has made an examination into the fitness of the person; has tried him, and followed up the investigation as to his character and qualifications. I say there is nothing in the language nor in the spirit of the section that implies that the Governor shall first try a party before you can remove him. He is to recommend that he be removed, and then the section goes on and specifies what shall be the duty of the Senate. It is the duty of the Senate to hear and to judge. It is the duty of the Senate, and made so by this section, to investigate. The Governor has no power to pass judgment upon any charges. There is no mode provided in which he shall inform the accused that he is to be tried by the Governor. The idea of trying without giving the accused an opportunity to be heard in his defense and make provision for such hearing, is an outrage upon our sense of justice and propriety; and if the framers of the Constitution intended that the Governor in the Executive chamber, should hear and try, and that his recommendation for removal should be a judicial sentence framed upon such an examination, they would have provided as they have in the case of the Senate, that the charges which he was to try should be furnished to the accused; that he should have an

opportunity to be heard in his defense; some mode would have been prescribed by the framers of the Constitution in which the trial should have the forms and the dignity and sanction of a trial, that an investigation should not be made, upon which a judgment was to be passed by the Governor, without giving the accused an opportunity to be heard in his defense. I say the absence of any such provision—the absence of any language hinting at such a mode of procedure on the part of the Governor, is an absolute and perfect answer to the suggestion of the counsel for the accused. When you come to the Senate with the recommendation of the Governor, there a trial is provided for; the accused is to be furnished with a copy of the charges; he is to be heard in his defense; the causes for his removal are to be entered upon the journal of the Senate, and the question upon his guilt or innocence is to be taken in the mode provided by this section by yeas and noes—I say, when you come to a fair construction of the language of the section, the proceeding is as plain as it could be written. Charges are preferred against a judicial officer to the Governor, and no provision is made requiring him to examine into the charges; if in his opinion they are proper to be communicated to the Senate for trial, with recommendation of removal, he so communicates, as he has in this message, which could not have been framed upon clearer or more correct principles, if the Governor had had the advice of the highest legal tribunals in the land. It follows the form that the Constitution prescribes; it provides a safe trial before a competent tribunal for every officer who is to be removed in this manner—it secures him against any improper removal and loss of his office, but it does not secure to him two trials; it does not profess to give him the benefit of a defense, first, before the Governor, and second, before the Senate. The Governor is charged with the responsibility of recommending a man for removal, not because he believes him guilty, but because charges are brought against his judicial character and conduct. They need not be impeachable offenses. There is nothing in this section that requires that the offenses should be impeachable offenses. He recommends his removal for cause as was specified in the Constitution of 1822. There it provides that the causes are to be stated in the recommendation of the Governor. Here it provides no such thing. The charges are to be communicated, and they are to be tried by the Senate

and not by the Governor, and they need not be impeachable offenses. Any cause (and I submit that is the plain, fair construction of this section) which brings the administration of justice into contempt, and any cause short of an impeachable offense, which shows that the judge is disqualified from holding the office, that he is unfit in his character, or that his character is such as to bring the administration of justice into contempt and disrepute, is a cause for removal; but it is not a cause for punishment or indictment. The unfitness to hold the place, conduct which shows that his character is such that it is not fit and proper that he should longer administer a judicial office, is enough, under this section, to authorize the Senate to remove him. It does not refer to crimes, although for an impeachable offense this milder form of punishment may be adopted, to wit: recommendation for removal from office. Yet a cause that is adequate and proper, under this section, may still not reach the height of an impeachable offense, and there is the difference and the reason for the introduction of this clause in the Constitution. Now, then, the Governor has not investigated this case any further than to see that responsible persons have accused this man of things that render his longer holding the office of judge improper, in the opinion of the Governor, and he recommends his removal, if the Senate find him guilty of those charges. He does not recommend his removal without the concurrence of the Senate, as his recommendation for removal could not by possibility be carried out unless the Senate did try those charges, and did find him guilty. Now, then, what is there about this? The Governor has followed the proceedings as pointed out by the Constitution. The distinction between the two cases is plain and evident. He has recommended his removal; he has satisfied himself that it was his duty to make such a recommendation, and he has transmitted the charges with a copy of the causes, which the accused has been furnished with for trial by this body, in the mode provided by the Constitution. It is your duty to try him, to investigate and hear his defense. It is your duty to refuse your sanction to the recommendation of the Governor, if upon such trial he is not proved to be guilty of the charges which have been brought against his conduct and character as a judge.

Mr. SMITH: Mr. President, the office of county judge was created by the Constitution of 1846. It did not exist before that in this State, and by provision in that instrument one of the proceedings for the removal of a person who had been improperly elected,

or who, after his election, should be found guilty of improper conduct, a proceeding for his removal was provided. George W. Smith, a young gentleman who has served his second term as county judge in the county of Oneida, having been twice elected by the electors of that county, is arraigned before this august tribunal, the Senate of the State of New York, and it is proposed to put him upon his trial to examine and determine the case, which, to him at least, is of the gravest importance that could possibly arise. It is the first proceeding of this kind that has been attempted since this Constitution of 1846 was adopted by the people, and it is becoming and proper that this Senate, in each step that it shall take in dealing with rights so valuable and sacred—in acting upon the interests so important to this defendant—in creating and establishing a precedent that may hereafter be referred to to regulate the rights of citizens and the rights of county judges and other officers—it should proceed with deliberation and care, and see to it that no mistake is made in the form of conducting this proceeding, and that no mistake is made in reference to the manner of initiating the proceeding. This constitutional provision provides for a trial upon important questions to this defendant, unusual and extraordinary in the history of this State, or the constitutional or statute legislation of any civilized country, and it fails to secure to this man the rights that are secured by this same instrument to the humblest citizen for the most trival offense known to the law, if the argument of the other side is to be believed. It is contended here, that upon idle rumor—upon the gossip of the street—upon the whisper of some irresponsible busybody—the Governor of the State will say to the Senate, "I have heard this rumor; I do not know whether it is true or not; I recommended to you that you inquire into it, and if you find it to be true, that you remove this man." And the tribunal is the Senate, and the majority of the Senate is a quorum, and the majority of the quorum are to remove, and therefore nine senators may pronounce a judgment against this man that blackens and destroys his reputation through life in a proceeding instituted in this way. Nay, more than that, sir. If what is contended for here is sound, a man as pure as the purest one around this circle may be utterly destroyed in his character by the mere charge that he is guilty of such crimes as that he deserves to be removed. The mere fact that a man, however innocent he may be, having been charged with these crimes, and a Senator from each district of this State has been called

upon to meet with his fellows here and try him, sends out to the people of the whole State a prejudice against his character that a whole life of purity might not overcome. I say it is becoming, therefore, that this question shall be deliberately considered, and I am glad that the opportunity is afforded to present it to-day, that Senators may have an opportunity to reflect upon this question before they shall determine it, if they should do so. I will not stop to argue in detail the history in courts of impeachment, or to inquire how they first grew up among the commons of England who went to be tried before the nobility, or to trace it down to the history of this country. I come to this simple question: the Constitution of this State says that the Senate may remove on the recommendation of the Governor, and if there is no recommendation of the Governor here, then there is no jurisdiction; and it is idle talk to say that there is a recommendation, for the document is here, and there can be no misconception or mistake as to what it is. "I recommend that a man be hanged if he is guilty." "I recommend that he be drowned if he is a witch;" but that does not condemn him to be hanged or drowned, for it is first to be ascertained whether he is guilty. Now, I wish the Senators would bear in mind in examining this question, that whether this comes before the Senate in its ordinary character as a legislative body, or is before it as a court, they sit to act upon this matter in the character of judges and jurors, and they act judicially and they pass upon these accusations brought against this man; and if this be so, we can gather some light by comparing this proceeding with the other proceedings provided for by the Constitution and statutes of this State. I am not aware, myself, of a single civilized country where a man can be put upon trial for a crime without some manner of accusation being found against him. You cannot put a man on trial in this State for stealing a chicken until he has been held by a committing magistrate or indicted by the grand jury. Why is this? A man is charged for stealing a mite's worth. The complainant must go before the magistrate; he must prove his case. Before the man is put upon trial at a special sessions the committing magistrate must decide that a crime has been committed and that there is probable cause to suppose that he is guilty. If a man is charged with the merest crime anywhere, you would proceed against him before a magistrate before he can be put on trial, or the grand inquest must file a bill of indictment, and charge upon the evidence that he is guilty of a crime.

Why is this? The policy of the law is such that, a man shall not even suffer the disgrace of a trial; he shall not be prejudiced by being brought to trial till upon the hearing of the case for the prosecution it shall be first found that there is probable cause, at least, to believe he is guilty. How is it with a judge of the Supreme Court or Court of Appeals? According to the ordinary course of proceeding the Assembly must examine the testimony; they must hear the case. Before he can be put upon his trial they must find a charge that he is guilty of the crime and then the other tribunal is to decide it. Now, how is it here? The Governor stands here in the place of the committing magistrate where the party would be tried before going to the special sessions, or in the place of the grand jury, where the crime is of a graver character, or the house of Assembly where you seek to prosecute before the courts of impeachment, and what he has to ascertain to his satisfaction so that he would be warranted and justified in recommending upon the responsibility of his office, the removal of a man, that there is probable cause to believe him guilty. It is true, as the learned counsel says, there is no provision of the Constitution requiring that the Governor should hear the testimony, that he should examine witnesses, or that he should call for the defense. No, he has the physical power of making the recommendation without it; but it was safe to presume that the Governor of the State would appreciate and realize the responsibility of his position, to that extent, at least, that he would not make the recommendation until he was convinced that it was just. It has to be upon the recommendation of the Governor. They were justified, I think, in assuming that the recommendation would not be made until the Governor was satisfied that the defendant was guilty. Why was this? Why, it was so that no man from mere malice—no combination of men from mere spite—that no persons from over excited party zeal or from any motive—should be permitted to bring to trial the county judge or other officer, without some tribunal, some court, some officer, some judicial examination somewhere, to first determine that there was probable cause. Does this Senate mean to decide that the Governor of the State may receive an affidavit or a letter, or the mere verbal communication of some one, and upon that that he can put upon trial a county judge without taking any responsibility himself, merely saying, "I recommend his removal if you find it true?" You have no jurisdiction unless the Governor has recommended the removal

of this man. The learned counsel says that is pre-judging the case—it is giving the man two trials,—it is providing for two investigations. I have already shown the Senate that that is secured to the humblest man God ever created that lives in this State. There is not a man so mean, who commits a crime so contemptible, but is protected by the Constitution of this State, until the committing magistrate or the tribunal provided for, shall first hear the evidence and say there is probable cause to believe that he is guilty. The language (and the only part essential to be read) is this: "He may be removed by the Senate on the recommendation of the Governor." Will anybody pretend that the recommendation "I do, therefore, recommend that the said George W. Smith be removed from his said office, if in the judgment of the Senate, he shall, upon a full and fair investigation, be convicted of the charges made against him." That was the very thing that the Governor is required to decide, and it is no prejudice to the defendant that he should decide it. It is the same that is made in every case. That is the very thing the grand jury is required to do. That is the very thing the Assembly decided in the case of John C. Mather. "*Resolved*, That John C. Mather, Canal Commissioner, in charge of the eastern division of the Erie canal, be and is hereby impeached for high crimes and misdemeanors." It is no more prejudging the case to make that recommendation than the case of Mather was prejudged, or the case of any accused party is prejudged by the action of the grand jury. See what the contrary would lead to. If the Governor may make the recommendation conditional that you remove him if he be found guilty, he may make that as to anybody. It does not involve the slightest responsibility, to be sure. That in this case there shall be no misunderstanding about it, to make it fixed and certain that this charge came here to the Senate without any examination or determination upon his part, he has told you thus:

"This section does not clearly define the details of procedure prior to final action upon the question of the removal of judicial officers, and there are no precedents within my knowledge to guide the action of the Senate in this instance. I have presumed, however, to refer the entire case for your consideration."

That is just exactly what he has no authority to do. That fails to confer any authority upon this Senate. In other words he shrinks from the responsibility imposed upon him. I say this in no offensive sense. The respondent was not to be arraigned

before this Senate upon these charges until the Governor had become satisfied upon the case of the prosecution that he was guilty.

—"I have presumed, however, to refer the entire case for your consideration without any preliminary examination upon my part."

Will the learned counsel say that the Governor, as a faithful and impartial incumbent of that high office, intended in the discharge of his official duties to recommend the removal of Judge Smith without even a preliminary examination? If the Governor has recommended his removal, he admits by this paper that it is without preliminary examination. But I claim the paper recommends no such thing. Let me read again:

"I have presumed, however, to refer the entire case for your consideration without any preliminary examination on my part, with a view of forming correct conclusions as to the guilt of the party charged with malversation in office, or learning his defense, believing that this proceeding is wholly within your jurisdiction."

That was a mistake. It is not wholly within your jurisdiction. It was never intended that this Senate should be convened, and should sit either in ordinary or extraordinary session to try a case until the Governor was satisfied that it was a case of such magnitude as demanded it should be tried. Now look at it in the light of public policy. If this be a correct precedent—if such a message as this will justify the bringing of an officer before this Senate for trial, then, without any cause, if a party has the influence to set the Executive in motion, without the Governor's exercising any discretion without taking any responsibility, without deciding anything, the party may be arraigned before the Senate and put upon his trial. That, I most respectfully submit, was never intended. Now it is due to the Governor to state that on our part we believe that in the examination of this question, which did not arise to the dignity of a preliminary examination, but as far as it did go, he did not feel it would be just and safe to lay to the charge of this young man that he had been guilty of such malversation in office as to bring the charge to the Senate, and that what did seem to him to be charitable towards the accused, he did in withholding an unqualified recommendation and leaving the matter to the Senate, thus we say, putting the defendant on trial here and tarnishing his fair fame by the publication of an accusation which never would have been made if the Governor had correctly comprehended his responsibility and examined the proof in this case. I feel justified in asserting, and I am sure that if this case shall proceed to an inves-

tigation, the members of this Senate will be amazed that any man should be charged before this tribunal with malversation in office upon such proofs as shall be produced here, and that any people, or any portion of the people, however small [pointing to the counsel for the prosecution], should have the courage and fortitude, and should volunteer to become the champions of the sovereign people of Oneida county, to prosecute and reverse their judgment twice declared in our favor. Can there be any doubt about it? If this provision of the Constitution means anything, does it not mean just this? Why go to the Governor at all if he can take a bundle of papers, and without examining them, tie them up and send them to the Senate, as the only initiative step for a trial of a party to secure his removal from office? What is the object of this proceeding, if it is not to have his investigation, unless it is for the reason that I have suggested?

Mr. SEDGWICK: I understand the point of the counsel to be that no person can be tried for any offense whatever, involving a punishment, until he has been accused in a certain way. The first clause of section 11 of article VI, provides for the removal of the justices of the Supreme Court and judges of the Court of Appeals, as I understand it, without any trial whatever, either preliminary or otherwise; in other words, that by a resolution of the House, concurred in by the Senate, the judges of the highest tribunal in the land may be removed without any trial whatever.

Mr. SMITH: I will answer the gentleman's criticism upon that question. Does not the section provide for two examinations? Does it not provide for an examination by the Assembly?—

Mr. FOLGER: Does not the latter part of the section provide for a trial?

Mr. H. C. MURPHY: It says that no removal shall be made by virtue of this section, unless the cause be entered on the journals, &c., and the party shall have had an opportunity of being heard in his defense.

Mr. SMITH: I will come to that presently. Does not the section provide for two examinations? Does it not require two-thirds of the Assembly and a majority of the Senate to vote to remove the officer to effect his removal? The idea that the Senate of the State would remove a judge, without trial, does not follow because the duty of removing is confided to the Senate and the Assembly. But let me refer to the last clause in the section. It reads thus:

"But no removal shall be made by virtue of this section, unless the cause thereof be entered on the journals, nor unless the party complained of shall have been served with a copy of the complaint against him, and shall have had an opportunity of being heard in his defense."

I take it that that is a trial. I ask if any investigation that requires the exercise of judgment in determining upon a question of right is not a trial. And to carry the point a little further, since the counsel has called attention to it: under the Constitution, on a trial by the Senate and Assembly, one would have to decide before the other. It does not provide for their acting jointly—one must try and pass, by a constitutional vote, a concurrent resolution, before the question can go to the other. Then the other must pass upon it. But both must give the party a hearing, as is provided for by the last clause in the section. Here, I say, the Governor must try and decide the question before it can come to the Senate to decide. To allow any different construction would be to open the tribunal here, and make it the most accessible of any in the State to any party who desires to assail another. If I am accurate in my conclusion, then, before the recommendation shall be made by the Governor, he must take the responsibility of deciding upon an exercise of his own judgment, and he has no right to say that the Senators here shall decide this question for him. He must ascertain the facts. Perhaps, as the counsel says, he has the physical power to make a recommendation without examination. But it is assumed that no responsibility would be taken by the Governor to make a recommendation until he was satisfied that the recommendation would be just. Now, to what I have alluded in the course of my remarks, I will allude to again in reference to this message. There cannot be any two opinions, it seems to me, but what the recommendation of the Governor must exist to give the Senate jurisdiction. There must be a recommendation in order to justify a removal. But is this a recommendation? He says he has not examined it, that he has not even made a preliminary examination, and that he has no opinion about the case, one way or the other, but he says, to satisfy the requirements of the Constitution and to give you jurisdiction, he recommends that the accused be removed, if you think he

ought to be. Is that any recommendation? None at all. It might be the expression of a cautious politician (and in saying this, I do not in any way mean to indicate that the remark is appropriate to his Excellency), if he was required to commit himself upon some doubtful question of policy; but does it come up to what is required in a judicial proceeding, where the rights of parties are involved? I submit that this prosecution should be dismissed; that it is due to the defendant that it should be dismissed, and that he should not be put upon his trial until it has been ascertained by the Governor, after an examination of the facts presented before him, whether it is a case justifying a trial at your hands. I am sure I have the highest respect for the Executive of the State, and I am sure also, that if he would examine the question, you would be saved the trouble of looking into it. I am sure that if he would take the trouble to examine the charges, he would see that no crime was charged; that no violation of the statute is charged; that the respondent has been guilty of no crime, and has broken no law. At any rate, it is our right, and we insist that the trial shall not proceed by the Senate, until there has been a recommendation by the Governor, so as to give the Senate jurisdiction, and until the Governor has heard sufficient proof to satisfy him of such improprieties as would justify a trial by the Senate, and the removal of the accused.

The President requested the counsel for the accused to reduce his motion to writing, which he proceeded to do in the words following:

The respondent moves that this proceeding be dismissed, on the ground that the Senate has not acquired jurisdiction of this case, the Governor not having recommended the removal of the accused, and submits:

1. That the Senate only has jurisdiction to remove on the recommendation of the Governor.

2. That the message declares that the Governor has presumed to refer the entire case for the consideration of the Senate without *any preliminary examination* on his part with a view of forming *correct conclusions* as to the guilt of the party charged or learning his defense.

3. That the message in no wise indicates the opinion entertained by the Governor, but makes his recommendation for removal depend entirely upon the judgment of the Senate and upon its convicting the accused of the charges.

Mr. H. C. MURPHY moved that the Senate be cleared for consultation, which was carried.

The Senate was then cleared for consultation, and on the doors being re-opened the President announced that the Senate had overruled the motion.

Mr. SHAFER, in behalf of the defendant, announced he had a further motion to make in reference to the matter contained in the alleged communication of the Governor, and in view of which, as the hour of adjournment had nearly arrived, he suggested that no further proceedings be had this day.

On motion, the Senate adjourned to meet on Wednesday, June 13, at 9 o'clock A. M.

SECOND DAY.

ALBANY, *June* 13, 1866.

The Senate met pursuant to adjournment, Hon. CHARLES J. FOLGER, president *pro tem*, in the chair.

Senators Barnett and E. Cornell appeared and took their seats.

Mr. WHITE asked and obtained leave of absence from attendance until Tuesday, June 19th, on account of imperative business engagements.

Mr. WILBOR also asked and obtained leave of absence on account of sickness in his family.

Mr. SMITH, in behalf of the respondent, objected to the granting of excuses to any members of the Senate from attendance upon the trial who were present at the commencement thereof and have since been in attendance.

Mr. SHAFER, in behalf of the respondent, submitted the following objection:

The respondent now here objects to the jurisdiction of this honorable Senate to further proceed with the prosecution, upon the ground that no recommendation whatever has been made by the Governor, for the removal of this respondent, and alleges and avers that no such paper writing as that purporting to be a message from the Governor to the Senate, and printed and set forth in Senate document No. 48, has ever

been communicated to the Senate by the Governor; but the said paper writing, purporting to be a message as aforesaid, is not a genuine message from the Governor, and this the said respondent now here offers to prove. And the said respondent now here avers and offers to prove that the message which was in truth and fact communicated or transmitted by the Governor to the Senate relating to the charges against him was on the day it was communicated to the Senate wrongfully and unlawfully abstracted from its files, and destroyed or altered, and the said pretended message upon which the jurisdiction of the Senate is now claimed, was wrongfully and unlawfully substituted in the place thereof, and which said substituted paper writing, in so far as it recommends the removal of this respondent and in other respects, materially differs from that communicated by the Governor to the Senate aforesaid. And this respondent further avers and alleges that of the matters hereinbefore alleged, he was wholly and totally ignorant until informed thereof on the 7th day of June, 1866, and this he is ready to verify.

MR. SEDGWICK: I would ask the presiding officer that the journal of the Senate may be produced which contains the proceedings in reference to the message in question.

THE PRESIDENT: The chair is informed that the journal is not in the possession of the clerk. There is a printed copy in his possession, however, from which the clerk will read the proceedings of that day.

The clerk then proceeded to read the communication of his Excellency the Governor to the Senate, under date of February 14th, and which appears in the proceedings of yesterday.

MR. SEDGWICK: I would further inquire if the journal of February 14th was, in the ordinary course of proceedings, read on the following day?

THE PRESIDENT: It appears by the printed journal of February 15th that the journal of the previous day was read and approved.

MR. SEDGWICK: I shall, in what I have to say in reply to this motion, assume that the message upon which this Senate is acting was sent to the Senate and entered upon its journals in due form. The journals were read and acted upon the next morning, in the ordinary course of business, and approved by the Senate. I object, in that state of the case, to any evidence tending to impeach the Senate

journals, as entirely inadmissible and inconsistent with the dignity of the Senate, and altogether out of order in a proceeding of this character. Now, if the Senate please, I may assume that on the 14th of February, the Governor sent a message to the Senate; that it was actually presented to the Senate upon this subject: that he may have said substantially to the Senate in that message that he recommended the removal of this officer, unless he should excuse himself, or in case he failed to disprove the charges which were contained in the paper accompanying the message. I may assume that such was the case, and that suggestion was made that this would be unfair, that this would appear unfriendly to the accused, because it threw aside the presumption of innocence which should attend every man accused of crime, and put him before the Senate in a more unfavorable position for a trial than he had a right to expect. Suppose that were so, and that upon suggestion informally, the message was withdrawn from the Senate by the Governor as originally communicated and altered in this particular to stand as it is now; I ask what there is about it of which the accused can take advantage; what there is about it of injustice to him; what there is about it of which he should complain? And I ask further, if the man brought before the Senate for trial on charges of this character is ever at liberty, if any precedent can be found, or sense of justice would dictate that, he should be permitted by this body to come in here and by evidence outside to impeach the journals of the Senate and say that the message which appears there entered upon its journals was not properly and in due form communicated to the Senate? It strikes me that the proceeding would not only be anomalous, not only be without precedent, not only be without justification in any sense of duty which the Senate owed to themselves or the accused, but that it would be absurd upon the face of it. The Senate journals are a record of the proceedings of the Senate; they are in their own keeping; every morning, the journal of the preceding day is read and required to be read by the rules and customs of the Senate, and approved by the Senators themselves. Now, I ask what sort of a plea it is for a person before the Senate for trial to say that the record of the Senate is improperly kept—that it does not tell the truth, that it is not veracious, and that therefore the whole business and proceedings of the Senate are to be upset by a plea of this character?

It strikes me, sir, that such a plea is entirely unfit and improper to be made—that if it were true that this message in its original condition was altered so as to throw around the accused the presumption of innocence and the shield which that gives him against attack, that he is the last man, the last person who should complain of it and undertake to impeach the records of the Senate in that particular.

MR. SMITH: I submit, Mr. President, that the prosecutor should, in some formal way prepare his views to meet this motion of ours, whether they demur to it, thereby admitting what we offer to prove to be true, or whether it is insufficient in law, or what. We present an issue of fact in relation to a supposed abstraction of this paper. We prefer that in some way, in writing, the counsel shall state his proposition distinctly so that when it is passed upon we will know what action has been taken.

THE PRESIDENT: It occurred to the chair to ask the prosecution whether they admit the facts offered so that the legal proposition can be presented.

MR. SEDGWICK: I rose on the preliminary question to the point that it is not competent for the accused to impeach the Senate journal. The message appears upon the journal, and there is no power in any manner to impeach the journal.

THE PRESIDENT: The chair understands that the question assumes this form: the counsel for the respondent moves that they be permitted to produce proof to show that the message upon which this action is based is not the message which was sent to the Senate, and that if that be established, then upon that fact, to found a motion to dismiss the proceeding. For this reason, the counsel for the prosecution, without admitting or denying the allegation of fact, claim that that subject is not for the consideration of the Senate, and that the Senate is bound by its journal, and that the respondent is bound by it.

MR. SEDGWICK submitted the following:

> Counsel for the prosecution, in answer to the motion submitted by the counsel for the accused, respectfully submit (without admitting or denying the allegations therein contained) that it is not competent for the accused, in the method proposed, to question or impeach the journal of the Senate.

MR. SHAFER: For the purposes of this question, of course we are to assume in the discussion of it, that it is in fact a demurrer,

although the counsel protests, in his objection, that he neither admits or denies. Yet for the purpose of determining whether it is admissible for this respondent, at this stage, to open this question, we must regard what we allege as admitted; otherwise, of course, we could not raise the precise legal question that is presented. If I understand the force of the objection of the counsel, it is this: that inasmuch as the statute requires the Senate to keep a journal of its proceedings, or such portions as they deem necessary, and inasmuch as the Senate has kept such a journal, and from that journal a certain message appears, upon a certain day, to have been received by the Senate from the Governor, and the day after, that journal is approved, that that is conclusive upon this respondent, and operates as an estoppel of record. Now we are familiar with the various kinds of estoppels. There are estoppels in pais, estoppels by deed, and estoppels by record. And we are also familiar with another rule of law: that, before a party can be estopped by deed or by record, he must, in some way or manner, be a party to that deed or to that record. In other words, a man's mouth shall not be closed from telling the truth, wherever it may be, or whatever it may be, unless there was a time when he should have spoken and did not speak. This is what is meant by the doctrine of estoppel. Has it ever been pretended before that a party who is affected by a proceeding shall not prove the truth of what transpired when he was entirely ignorant of it, and not a party to it? Let us look. We all agree that a message from his Excellency the Governor to the Senate, recommending removal, is essential to the end that a jurisdiction may be conferred upon the Senate. We all agree that this respondent, so far as the sending of this message was concerned, was an entire stranger, and no party to it. It was not at his suggestion, or at his request, or by his procurement, or was he privy to it in any way or form. I think the Senate will take judicial notice that this respondent was in no way, shape or manner, a member of the Senate which approved that journal, and I think that they will assume the doctrine that at all times, under all circumstances, a party affected by a proceeding may show that that proceeding is void for the want of jurisdiction. The message is essential to confer jurisdiction upon this Senate. The message which was alleged to have been sent here was wrongfully and fraudulently abstracted from the files of the Senate, and wrongfully and unlawfully altered or

destroyed. If that is so, then the very paper which was essential to the jurisdiction of this Senate has been wrongfully and unlawfully destroyed, and you are thus here without any record, any message, any recommendation of any kind whatever. But to the point, for that is the precise one that I raise. He says that we are estopped from proving the truth of this proceeding. Well, I would like to know where he gets this doctrine of estoppel from? Mr. PRESIDENT, the truth is that there is no statute in this State making your journal evidence of your proceedings at all. The counsel insists that the journal is conclusive evidence of what was done. I challenge the counsel to produce a statute making it even presumptive evidence of what you have done. It is not, by any statute, presumptive evidence of your proceedings, but *ex necessitate*, it has, by the general rules of evidence, been admitted as presumptive evidence. Presumptive evidence as to whom? As to the public? As to the parties affected by it? In court they frequently resort to your journals for the purpose of ascertaining the particular vote upon any particular question, as in cases where the statute was required to be passed by a two-thirds vote. The judges have seen fit to refer to it for that purpose, because it was more easy than to examine the presiding officer or the clerk who tallied. But is it conclusive evidence as against a party who is to be affected by that proceeding? Now, I refer to rules of law, but I am not going to enlarge upon them; although many of the Senators are laymen, yet many of them are eminent lawyers who are familiar with the principles I am going to state. The first rule is, that the proceedings of every court, of every tribunal, unless they possess jurisdiction of the subject matter, are void. Jurisdiction is essential to the validity of the proceedings of any court or any tribunal in any matter whatever, I care not what, as well where it affects the person as the subject matter. Now, take inferior courts,—not courts of record,—and no presumption is indulged in, in favor of their proceedings. The party who claims that the proceedings of an inferior court are regular, the onus is upon him to prove the affirmative and to establish it. There is no presumption indulged in favor of the jurisdiction of inferior tribunals. There is another rule. Every presumption is indulged in favor of the jurisdiction of the tribunal possessing general jurisdiction, being a court of record. You take the Supreme Court: a judgment in that court is produced and the presumption of law is that the court had jurisdiction, because it is a court of general jurisdiction. Those

presumptions are supposed to be necessary because of the greater accuracy of their proceedings, the greater learning of the judges, and because of the greater learning and intelligence of the officers known as the attorneys, who practice in those courts. But although this presumption is in favor of the jurisdiction, it is a rule of law as universal as any natural law, that you are at liberty at all times to overcome this presumption, and to prove they had no jurisdiction. There is no lawyer who can dispute this. Now apply those general principles to this case. I concede that for the purpose of this controversy (and it may be assumed), that this is a court of general jurisdiction, having jurisdiction of the subject matter and of the person in the class of proceedings such as is now before it. It may be presumed, (and I am willing to go even one step further, and admit) that the production of the journal is *prima facie* evidence that the message which is spread upon the journal was the message which came from his Excellency the Governor. But that is a mere presumption as against us. That message is our indictment, and we stand here challenging the record—challenging that message, and stand here with the original message, with the Governor's name attached to it, altered as you all see, and as we are ready to prove it. [The counsel here held up the message to view.] We stand here to overcome the presumption which that journal raises, and to say, in truth and in fact, when we knew nothing of it, and were not a member of this body, that after this message was sent to this body, it was found to be irregular, and that it was taken by an officer of this body down to the Executive Chamber, undoutedly from good motives, and that there his Excellency, undoubtedly from like good motives, sat down and changed the message in such a way as to render it null and void. The precise point is that, presumptively, the message is right because of its production from the journal. But we propose to overcome that presumption. We propose to show, as we would say in case of an indictment presented against us, that *prima facie* on the face of the indictment it is regular, but since presented by the grand jury, you, Mr. public prosecutor, or one of our judges, have descended from your bench and sat down and changed that indictment without our knowledge and placed it upon the files of the court. Now you propose to try him on it. Sir, says the prisoner, under circumstances like these, this is not the indictment framed by the grand jury; this is not the indictment

that was presented to the court. This indictment has been wrongfully and unlawfully changed without my knowledge or consent, and if you can change it in one respect, you can change it from an accusation of assault and battery to that of murder and I have no remedy." That is the theory upon which we go, and if the doctrine of the distinguished counsel upon the other side is true, that this record imports such an absolute verity as would prevent the plea *nul tiel record*, then indeed a man in the situation of this respondent is without remedy; then indeed one message may be sent here by his Excellency the Governor, and he may be tried upon another; then indeed there is no necessity of its being sent here at all. I shall undertake to establish that when this message was changed in any important particular, it became null and void. Now, are we at liberty to show that you have no jurisdiction? Mark how far I have gone. I concede the rule of law in its broadest sense in their favor, that the presumption is that the journal is correct. How would you raise the question if you were in a common law court? You call for the reading of the message, and upon its being read, I plead *nul tiel record.* The production of it is *prima facie* sufficient. What is the record of a court. It is the judgment, together with all the proceedings of the court, and upon the production of the record, upon the plea of *nul tiel record, prima facie*, the plea is overruled, unless I can show some alteration which vitiates and destroys it. Now, a record is described by Bouvier; I have not the authority at hand but among the records is described the proceedings of legislative bodies which you cannot disprove, and which are taken to be absolutely true, as the statutes of the State. Now mark—the statutes of the State. When it is averred that a given statute was passed by the Legislature, it having gone all through the solemn forms of legislation, it has been held in that class of cases only, that the party cannot have the privilege of proving that it was not thus passed. In other words, that is the only case in which you cannot prove the truth, because the act of the Legislature is of so high and solemn a character that no averments shall be heard against it. Now let us see what this message is. By the 1st Revised Statutes, 5th edition, page 468, section 2, "It is the duty of the Governor to communicate by message to the Legislature at every session, the condition of the State, and to recommend to them such measures as he judges expedient." Since the

adoption of this statute, the uniform rule of communication between the Governor and Legislature in session has been by message, instead of by address, as was formerly the practice. When the message is thus communicated by the Governor to the Senate, and delivered to the Senate, the first inquiry is: What is the nature and character of that message as thus communicated and delivered? It becomes, I take it, one of the records of the Senate; it is a matter of record in the Senate; it is a matter not only of record, but it is a matter of the greatest public importance so far as its publication and the prevention of its destruction or alteration is concerned. When it is thus delivered to the Senate it is in the possession of a co-ordinate branch of the Government. Now we concede it would be entirely competent for the Senate, if his Excellency, the Governor, had sent a respectful message requesting its return, to have consented to or to have refused to return it. Either course would have been admissible. Mark, it was not a message referring to the people at large; it was not a message upon any subject of public policy; it was not a message upon any subject of legislation, but it was an indictment of one of the officials of this State, and, notwithstanding his official character, a citizen of this State, and not the humblest in it. That was an accusation on the part of the party having the power to accuse—an accusation of the defendant of offenses upon the proof of which it is claimed that he should be removed from office. They contend that it is a matter of so grave a character, and of so much public importance,—that it is a record of such high character as to import absolute veracity. That I have undertaken to disprove, but it is nevertheless a matter of record of a public character, addressed by a public officer to this body, and thereby it becomes a public document in the possession of the Senate. Now I will undertake to say that the spectacle has never been witnessed before of one branch of the Government—the author of a document—upon a suggestion (no matter from what source), that there was an error in it, secretly, covertly, wrongfully and unlawfully taking it from the possession of the Senate, without the knowledge of the body to which it was addressed, with their entire ignorance of it, to alter and change it to suit the Governor, and to suit the idea of the one making the suggestion, to have it brought back, in its altered condition, and have it palmed off upon the Senate, the world and the accused,

until this hour, so to speak, as the one originally sent. It is due to the high character of this Senate; it is due to the high character of the Executive, for we charge nothing upon him except that what he did was, in its legal effect, unlawful: that we be at liberty to give this proof. We make no pretense that there was any attempt or design to injure the respondent, but that the very touching of this public document, or the altering of it in any respect, was so unlawful an act as to render it void. We think that this is an important question, and one which ought to be fully and fairly presented. This is what I desired to read from Bouvier: He says that a record is a written memorial made by a public officer authorized by law to perform that function, and intended to serve as evidence of something written, said or done. Here is a written message or memorial sent by the Governor to the Senate, and intended to serve as evidence of his views, and what he has said and done. Now, if this is a record, the next point is that, we allege it was unlawfully and wrongfully altered. When it is once delivered to this body, the Executive is *functus officio*, so far as that message is concerned, and he has no more power or control over it than a grand jury has over a bill of indictment presented to the court. After it is entered upon its record, the grand jury can not have anything to do with it, nor could the district attorney abstract it from the record, or change it in any particular; nor could the court order it to be done, and, at the same time, hold the prisoner accused for trial on that record. There is no pretense of that. And it is well suggested by my associate that it has never even been thought of, and it has never been attempted in an accusation of such a character as that, even by the grand jury, or the district attorney, or the court to amend it; and the Governor could not, to-day, amend it by any known rule of law. There is no power in this Senate, according to the precedents, for leaving it to the Governor, or any other tribunal, to amend it, it being a proceeding of a criminal character—so sacred the instrument is. And that is for what purpose? As well to answer the ends of great public policy as to protect the rights of the accused. It is against public policy—I will not say that it is against public decency—but it is certainly against public policy for any official (and the greater the official the greater the objection) to alter in any respect or any manner a grave message to a grave and dignified body as this is, after its delivery, without the consent of the Senate, even though it may not injure a hair on the head of

the respondent, and although, upon the suggestion of the counsel on the other side, the Governor did intend to benefit him. It is not for him to say whether what he does benefits the respondent or not; it is not for me to say; that is a question which is addressed to this body, when the message is once delivered. When the message is delivered to you, you have supreme control over it, and you are to adjudicate upon its legal effect; you are to take it, and if it is sufficient, you are to make such disposition as in your judgment and wisdom you may think proper. Now, what is the effect of the wrongful alteration of this message? We aver that it is not a genuine message; and may I trouble the clerk to read the last portion of our averment.

The clerk proceeds to read the following extract called for, in words as follows:

"And the said respondent now here avers and offers to prove that the message which was in truth and in fact transmitted by the Governor to the Senate, relating to the charges against him, was, on the day it was communicated to the Senate, wrongfully and unlawfully abstracted from its files, or destroyed or altered, and the said pretended message upon which jurisdiction of the Senate is now claimed was wrongfully and unlawfully substituted in the place thereof, and which said substituted paper writing, in so far as it recommends the removal of this respondent, and in other respects, materially differs from that communicated by the Governor to the Senate as aforesaid. And this respondent further avers and alleges that all the matters hereinbefore alleged he was wholly and totally ignorant of until informed on the 7th day of June, 1866, and this he is ready to verify."

Now we aver it was wrongfully and unlawfully altered in material respects, and for the purpose of this motion that must be conceded to be true. Now what is the effect of this wrongful and unlawful alteration of an instrument in a material respect? Greenleaf says:

"Though the effect of the alteration of a legal instrument is generally discussed with reference to deeds, yet the principle is applicable to all other instruments. The early decisions were chiefly upon deeds, because almost all written engagements were anciently in that form; but they establish the general proposition that written instruments which are altered in the legal sense of that term, as hereafter explained, are thereby made void."—

Then if this message was wrongfully and unlawfully altere

any respect, and it was changed and another palmed off as the original, it is void from the commencement to the end.

—"The grounds of this doctrine are two-fold. The first is, that of public policy, to prevent fraud, without running any risk of losing by the event, when it is detected. The other is, to insure the identity of the instrument, and prevent the substitution of another without the privity of the party concerned."—

That is a rule as old as the law itself; and that is one of the grounds upon which this doctrine is put, that the Governor shall not accuse the respondent in a message in one form, and then without the knowledge of the Senate and the respondent, change it so as to assume another form whether it affects the respondent or not. The spectacle is an indecent one. Public policy is against it. If you can change a message in any respect you may change it from commencement to end. While the world may think you have one character of proceedings before you, there has been in truth and in fact, an entirely different proceeding. I will undertake to say, that in the history of this government or of the General Government there never has been a proceeding of this character, heretofore, claimed in any respect to be regular. Why, suppose that a Senator sitting about this circle, having voted upon a bill which has gone to the hands of the Executive, thinks that he discovers an error in it, and without sending a respectful message to the Governor to have it returned, should walk down to the Executive chamber and change it and palm it off as a statute? What would you think of such a proceeding as that? Is that a greater wrong to the public than was perpetrated on the respondent, when a message of this character was sent to the Senate and was afterwards returned and changed? An officer of the Senate, or one who has a right to be in the Senate, takes that message down and thinks it should be changed and thereupon it is changed. What must the alteration be? Greenleaf says:

—"An instrument derives its legal virtue from its being the sole repository of the agreement of the parties, solemnly adopted as such, and attested by the signature of the party engaging to perform it. Any alteration, therefore, which causes it to speak a language different, in legal effect, from that, which it originally spake, is a material alteration."

We aver, and they admit that it was materially altered. We aver it was materially altered in that portion of it recommending of the removal. Material. We use the precise legal phrase, and

they admit it, for the purpose of this motion, and the question is whether we shall prove it. Let me go a little further. Let me suggest that you go on and retain jurisdiction of this question; you proceed to remove this respondent; he refuses to yield up his office; a proceeding in the nature of *quo warranto* is brought against him; it is alleged on the part of the people that he was removed by the proceedings of the Senate on the recommendation of the Governor, and the answer is that the recommendation was a forgery. In such a case don't you think in a civil tribunal we would be allowed to prove that it is a forgery, and that you had no jurisdiction. I don't mean a forgery in a criminal sense but in a legal sense. Don't you think in such a case as that the respondent would be allowed to show that in truth and in fact what appears as a message of the Governor is not a message because of the alteration? I think we could raise it in that form. Suppose when his salary is due him it is refused, and suppose in that case he brings an action for his salary; the defense set up is his removal, and that he is no longer entitled to hold his office. He replies that he was removed by a tribunal that had no authority because the recommendation was altered. Hasn't he a right to prove it? What lawyer doubts it? Why? Because the party affected by the action of any court or tribunal when he is not before it is at liberty at all times to show absence of jurisdiction. And mark—this was done on the very day the message was received—on the 14th of February; and we are ready to prove that it was not until the 7th of this month that we became possessed of these facts and got hold of the original message that we have now here. Nobody dare deny the alteration. It is open for inspection, and any Senator here may see the manner in which it was altered. The sign manual of the Governor is attached to it. But shall I be told in this high tribunal I shall not prove this truth? Gentlemen, it affects this man in a respect dearer to him than life, for life is worth nothing to him if he is removed. Although it is a delicate matter for me to speak about it, I will say I scarcely knew him from the manner in which he has already been affected within the last four months. Shall we be told we shall not prove the truth of it, that your journals are absolutely true, and that we cannot show that there has been a change made by the Executive? Now let us go a little further. I intend to prove to this Senate that this public message of his Excellency the Governor is so sacred that neither he nor any one else has the right to touch it—that no

one has the right to strike out a word. I shall show that at the common law the alteration of a record of this character was so high a crime as to be treason. It was treason to change the royal charter—high treason, not petit treason—high treason to change a royal charter, which was of no more dignity, and no more importance than the message which now lies before you. I shall show that it has been held from time immemorial that in case of any public record, even like a parish register, he who would change it in any respect was guilty at the common law of forgery—although, in this case of course, we do not pretend that his Excellency, the Governor, intended to do any wrong—but I mean to say that the effect must be to void all such things. Bouvier, under the head of forgery, says:

"With regard to the thing forged, it may be observed that it has been holden to be forgery at common law fraudulently to falsify, or falsely make records and other matters of a public nature, a parish register, a letter in the name of a magistrate, the governor of a gaol, directing the discharge of a prisoner."

I have a case in Carrington & Payne where a person sat down and assumed to write a letter in the name of the magistrate that a certain prisoner had given sureties to keep the peace, and therefore he ought to be discharged, and the jailer having acted upon like letters from the real magistrate, discharged him. It was holden that inasmuch as the party assumed to write a letter in the name of a public officer, he was guilty of forgery. He was convicted, and the conviction was held good by the House of Lords. There are other authorities which I will cite as soon as they come up. But the effect of what I have already cited is to show:

First. That this message becomes a matter of record when it is delivered here.

Second. That although the journal is presumptive evidence when produced that it correctly sets forth the message, like all other presumptions we may rebut, disprove and overrule it.

Third. That the proof would show an alteration in the manner in which we have stated it.

Fourth. The alterations being in a material portion of the recommendation, it renders the entire message void.

Fifth. The message being void, and the recommendation being essential to the jurisdiction of the Senate, it is as though there had been no message here at all.

We say these legal propositions are indisputable if this tribunal

is to be governed in any manner, or in any form, by the rules of law that have hitherto governed in all parts of the civilized world. If, on the contrary, the Senate are prepared to hold that when this respondent was not before them, and in his absence these things can be done and he cannot prove the truth of it, you may as well burn your law books, and condemn this man in any way that your fancy, whim or caprice may dictate. We cannot defend him in any other way than that prescribed by law. If it is held you are not to be governed in this by any known and well-defined rules, it is, of course, entirely futile for us to raise these objections. Hawkins says this:

"Forgery by the common law seemeth to be an offense in falsely and fraudulently making or altering any matter of record, or any other authentic matter of a public nature, as a parish register, or any deed or will, punishable by fine and imprisonment, and such other corporal punishment as the court in its discretion may think proper." * * * "And first it is clear that one may be guilty thereof by the common law, by counterfeiting a matter of record, for since"—now mark, for it is a reason that tells with a thousand tongues in a case of this kind—"for since the law gives the highest credit to all records, it cannot but be of the utmost ill consequence to the public to have them either forged or falsified."—

And another rule he lays down is, that it renders it void, and that it is a forgery at common law even if there was no intent to injure in any way or form. He first speaks of writings of a public nature, and then of writings of an inferior nature, and he closes section 11 of the same chapter thus:

—"But, perhaps, it may be reasonable to make this distinction between the counterfeiting of such writings, the forgery whereof hath been already shown to be properly punishable as a forgery, and the counterfeiting of other writings of an inferior nature, that the former is in itself criminal, whether any third person be actually injured thereby or not, but that the latter is no crime unless some one receives a prejudice from it."

The counsel has suggested that we are the last ones who should complain because we are benefited. The common law has said, and has said from that time to this, that it is forgery whether any third person be injured thereby or not. So that the rule of law is now established, and it has been from time immemorial, that he who would undertake, in any way or manner, to change a public record or public document, is guilty, within the common law rule of

technical forgery, whether it is done with a design to injure another or not, or whether in effect it prejudices or injures another. The principal answer to this problem will be,—and it is the only argument that can be made in opposition to it,—that it may possibly affect, in the judgment of the world, if this motion is granted, the position of his Excellency the Governor. We disclaim any such idea. The idea of the Governor was undoubtedly to put it in the form in which he thought it ought to be put, after discovering his original error. But the legal effect of that is to render it void, and there is no pretense that the distinguished officer, occupying the high position of Governor of this State, ever dreamed that the act he was performing was in violation of the law. We acquit him of all such notions; we disclaim expressly that there was any such thought as that entertained on the part of the Executive. But it having been done, this Senate cannot shut its eyes to the legal effect upon this instrument. This Senate cannot afford, it seems to me, in making precedents in this case, to sit here and undertake to pass solemn judgment upon an indictment which we have proven to you has been altered and changed, and which has no legal effect or validity. It is unbecoming your dignity; it is unbecoming this august tribunal. It would be a farce of the most ridiculous nature. It would be nothing, in my judgment, but a farce, because, whatever might be the result, I have no sort of question that the proceedings of the Senate, with this admitted record, would be absolutely null and void.

Mr. SEDGWICK: The counsel upon the other side certainly displays commendable zeal in his efforts to prolong the life that depends upon the issue of this trial. I hope I shall not be adjudged guilty of cruelty if I contribute in a much less degree to that desirable end. As was said by the counsel, this case is a very simple one in the facts which he proposes to show: that the message was communicated to the Senate; that an officer of the Senate called the attention of the Governor to a particular portion of it on the same day that it was transmitted; that it was altered in that particular and entered upon the journal of the Senate. That is the whole of this case, as suggested by the counsel upon the other side. Now, suppose it was true? This message is no indictment of the person who stands here upon trial. It has nothing to do with the indictment or the charges preferred against him. It is a bare message or letter from the Executive, communicating to the Senate the charges which have been brought against him. But he is not tried by the letter. He

is not tried upon any charge contained in the message. It is no indictment, or anything of that character or description. Now, I appeal to the usage of the Senate and of the Legislature, to sustain me in saying that it is the custom, and that there is precedent for the return of documents, bills and various papers that pass between the two houses, from one to the other for correction.

MR. SHAFER: I concede that, but it is upon a message that it is returned. In that way it is customary and proper.

MR. SEDGWICK: Concede that this message came to the Senate in a different form, and that either the President of the Senate, or some officer of the Senate, took it and called the attention of the Governor to a certain portion of it, who changed it and sent it back? What is there of it? The counsel magnifies it into forgery, treason and an offense against public decency in the Executive. On the other hand it is a thing that may occur any day between the Executive and the Senate, the Senate and Assembly or the Assembly and Governor. The Senate's journals show that there is a message entered upon them regularly and approved, covering charges against this officer whose removal is recommended. You have a copy of the charges before you. There is no pretense that they have been interfered with by the Governor. I say, therefore, that this is mere technicality, and if it had not been argued with the zeal and ability which the counsel has displayed, I should say it was a palpable absurdity upon the face of it. Nobody's rights have been affected. No proceeding, no custom has been departed from. Admitting everything that he charges to be true, the Governor has merely changed—not his recommendation of removal—for that stands—

MR. SHAFER: No sir; we aver that has been changed.

MR. SEDGWICK: Not his recommendation of removal; I say, that stands; it appears upon the paper now before the Senate, entered upon its journal, and it has been so adjudged by the Senate.

MR. SHAFER: If the counsel does not misapprehend our second count, it expressly avers that it was materially altered in so far as the recommendation of removal was concerned, and in other respects.

MR. SEDGWICK: I say it now appears by the message in the possession of the Senate that the recommendation of removal stands, and was so adjudged by the Senate, yesterday, in this case; that there is a recommendation of removal upon the mes-

sage upon which you are now acting. Now, suppose the Governor had sent two different messages on the same day. Suppose he had sent, in the first place, a message closing with the recommendation that this man be removed from office, if he fail to disprove the charges covered in the message or establish a satisfactory defense thereto. Suppose he had sent that message, and instead of its being taken back by the Lieutenant-Governor, or by the clerk, or by a Senator, his attention being called to the fact that he had put upon the accused the *onus* of disproving the crime, he had sent a second message, closing in the other form, what difference is there in substance between the two cases? And is the accused to be permitted to say, because the Governor had sent in a second message or a corrected message, that he had preferred a new indictment; that he had changed the old; that he had violated his rights as a citizen; that he had done anything to deprive him of any right or any defense; that he had affected his interests or his rights in any particular whatever? It would be absurd to say so. Yet what is this in substance but that same transaction? The Governor finds, upon his attention being called to it, that he has put this accused in a worse position than he might rightfully claim to stand before the Senate, and instead of going through the formality of sending his message to the Senate, to have it returned, he corrects it in this informal manner. Is anybody injured? Is it a course destitute of precedent by House or Senate? I submit that it is not—that this is a mere technicality not intended to cover and preserve any right of the accused, but it is one of those technicalities that are interposed between guilt and punishment—something intended not to affect the merits of the case, but to prevent the merits of the case being reached by the tribunal that is to judge upon it. Now I shall not spend any time upon these authorities that have been produced here. It requires no great sagacity to distinguish between the cases that have been produced and the case here. I should think I was wasting my own time and that of this Senate if I should stop to argue that here, upon the broadest pretenses that they have put forth, there has been no forgery; there has been no treason; there has been no alteration of public records; there has been no alteration of private writings, and that what has been done has been done and may be done under the sanction of the acknowledged customs of the Senate in its intercourse with the Executive, and is what may be done every day in the year.

Mr. SMITH: Mr. President—I shall not detain the Senate long in what I have to say upon this question. The first opportunity that the respondent has had of being heard before this Senate was when he was called, in a ceremonious manner, yesterday, by the PRESIDENT, when he was sitting in this apartment, outside of this circle. He then submitted to the honorable Senate that the message that was produced contained no such recommendation for his removal as was required by the Constitution to give this body jurisdiction in the case. Upon that he moved to dismiss the proceedings. That motion was denied. He now comes before you and asserts that no such recommendation as that which appears upon the journals of this Senate was ever made by the Governor, that no such paper was ever made, and the question now up is whether he may prove it or not. It is said on the other side, after having asked the clerk to read from the journal, that the journal of the proceedings in this Senate is conclusive upon this defendant, and therefore he cannot prove it. It is assumed in a further argument by the counsel, that certain facts which he supposes may exist cannot prejudice the defendant, and therefore the proposition is immaterial and is a technicality. He only gives us credit on our part for standing here to protract the official term and postpone the punishment of the guilty. We stand here and ask leave to prove before this Senate that the paper you have never had any legal existence—that no such message was ever made. Now, can it be possible that this right is to be denied the defendant? The people of this State will be startled to hear that it has been decided that a defendant, arraigned before the Senate, offered to prove that the authority on which they founded their proceedings was a forgery, and that he was denied the opportunity. That is the question here. Its effect would be a matter for further considerations, not appropriate now, because the facts are not before you. I need not add a word to what has been said by my learned associate in answer to the proposition of the counsel for the prosecution, that we are estopped by this journal. The doctrine is ridiculous. That a party can be estopped by a record to which he is not a party and to which he does not claim to hold any right is absurd. In any court, in any stage of proceedings, the defendants may assail the jurisdiction of the court to show that it never had authority over them. In the civil courts of this State—in the Supreme Court of this State, where a defendant has been sued,

where judgment has been taken and entered, and where execution has been issued, he may come before the court and prove that originally they had no jurisdiction, and may impeach the whole record. If we are right in this, nothing can be gained by continuing this proceeding, because the Senate is not above the law, nor beyond the reach of the courts. When this question reaches the courts, it cannot be held that this defendant cannot put in the truth. We admitted yesterday that the Governor had the physical power to make this recommendation without being satisfied of its truth. But we deny that this Senate has any power to proceed with this case with other than the genuine message as the basis of its action. I will make an allusion or two to this last argument by the learned counsel upon the other side. We are told that this motion is a quibble, that we are relying upon a technicality, and only seeking to delay the conviction of this man, and that too, when we allege that the accuser of this defendant, holding the highest position in the State in conference with one of the judges of the accused, or a portion of them, fixed up and amended the charges upon which he is to be tried. Is that a technicality? Is that a quibble? If the first message was legal, why change it? If it was illegal, how unbecoming, to use a moderate term, it was for the accuser, or the judges, or any portion of them, to get together and attempt to convert it into a legal paper. Why was it that this paper needed any fixing? Why was it necessary to draw a pen across a line of it or strike out other words? Why was it necessary to bring the keen edge of the steel in contact with the surface of this great State paper, and erase line after line on the paper, and write other words over that erasure? If the first message was good where is the propriety of this proceeding? Certainly, then it was improper. If the first message was good, he is to be tried upon that. Is it a mere technicality when his accuser and the highest judges of the Empire State come privately together and correct and change a State paper communicated by the Executive to the legislative body, and vary it in important particulars. Ah, but the learned counsel says, the variation was in favor of the accused. Who knows that? The very reason for making the paper void, is that oral proof of the effect of the change is too uncertain to be relied upon. Where the law requires a record for verity and certainty, it won't allow it to be changed without declaring the whole paper to be void, for the reason that the law requires certainty.

You cannot change a writing and then ascertain what it really was by parol, making parol evidence stand in the place of the record. The policy of the law rests upon the certainty of having what the paper really contained. The learned counsel supposes (and I guess he is pretty near the truth), when he asserts what the evidence would be. He has been evidently in consultation with some one who is familiar with the early private history of this proceeding. He supposes to you that in this message that was originally communicated to you, the Governor admitted that he assumed, not from examination, not for the purpose of deciding, but for the mere purpose of giving jurisdiction, a certain state of things, and then he deliberately recommended to the Senate that this man be ousted from the office of county judge of Oneida county, and disgraced for life—turned out of his place—unless he should do what has never been required of mortal man in this State, or anywhere among civilized men—prove his innocence. He supposes the message contained that. Suppose the message was before you now recommending that you remove this gentleman from the office of county judge, unless he can prove to your entire satisfaction his innocence of the charges brought against him. Would any man have the hardihood to stand here and contend that that was such a recommendation of removal as was authorized by the Constitution?—a removal to follow an examination on your part upon a message sent in to you by the Governor, recommending that you remove him unless he can prove his innocence to your entire satisfaction? He says it was to favor the accused. To favor! Are the privileges that you enjoy as citizens favors? That a man has life and liberty, is it a favor from his neighbors? Was it a favor to this man to say: "You shall not be adjudged guilty, if you prove your innocence?" Was that a favor? No. The message that was communicated to you, if the suspicions of my learned friend be correct, denied him the rights of a citizen and required of him to prove his entire innocence or else you would remove him; and it was changed from denying him the rights of citizens to granting him a right that every citizen has. But he says it is a mere technicality, a mere quibble; that it is according to the custom of the Senate; and according to the custom in communications between legislative bodies and the Executive. I am free to admit I don't know much about the customs. I have never had the honor of being a member of any legislative body, or of having any other very important connection, except with the

church; I have never attended the deliberations of the Legislature very often, but I am free to say this: that if it is common among these persons to have these communications passing up and down outside of the legal course, I hope I never may have the honor. I admit that some clerical error, some irregularity in date, perhaps, some misspelling, or some error in punctuation, that doesn't make a material change, may be corrected; but I deny, when it is asserted here, that it has ever been the custom of any legislative body, or the Executive, to bring back communications of an important character and change or alter them. But it is said this was a mere alteration for the benefit of the defendant. I do not suppose anything wrong was intended. We may as well talk of this thing, as I suppose the evidence will really show it. I apprehend the truth will come out to be about this: that this message was prepared by the Governor with the aid of his advisers and was sent to the Senate; that it was read in the Senate the next morning, and I suppose the clerk read the journal very much as it was read this morning, and when he came to the communication he said, "as read yesterday." I take it from that the Senators would not discover any error. It would not be read over again, and upon that the journal is approved. In the meantime, some vigilant friend, some officer who desired to be certain that everything should be regular and perhaps, as the counsel says, watchful, because he was especially enthusiastic that this defendant's rights should be protected, discovered that the message was wrong. The President of the Senate discovered that it was wrong. Of course there was something wrong about it, or it would not have been taken back. Of course it was for the benefit of the defendant, or it was a mere correction of a clerical error. It was handsomely done. There is the paper. All in the same handwriting. It looks regular, but when you bring it to the light you see that part of the document is thinner than the rest, that it affords evidence of erasure. We say and offer to prove, that no such message as the one on which you propose to proceed here was ever communicated by the Governor to the Senate. Let me be understood. We offer to prove that the very paper on which these proceedings rest was altered, and we say no such message was ever communicated by the Governor to the Senate. Suppose I had drawn this paper, and the President of the Senate had received it, and it was read and put on the journal. A Senator comes in and says, "That is not the Governor's message; that is a forgery; the Gov-

ernor never sent that; it has never been communicated to the Senate." My learned friend would get up and say, "Read the journal;" the journal being read, and that message being found printed in it, and the Senate having the next morning approved the journal he would hold that we are precluded from proving this forgery. We say that the message that was presented was unlawfully and wrongfully abstracted; that it was altered in material respects in the clause containing the recommendation of the Governor. Altered in material respects, we say. They call for the journal. The journal does not show these alterations. Ah! of course it does not. Suppose, after this message of the Governor had been introduced here, and had been read, and the journal approved, the clerk of this body, without consulting this body or any of its members, had altered the recommendation, or struck it out, or changed it in any material particular, and we came here to show that this message was presented to this body, and that it was thus altered by the clerk—could we not show it? The whole, then, is summed up before you: that the defendant stands here and offers to prove that this proceeding is based upon a paper that was never communicated to the Senate. The learned counsel in reply to our statement that this is in the nature of an indictment, says it is a mere letter; and that you yesterday passed upon its sufficiency of the paper now before you. The question to-day is, is this paper before you a message from the Governor, or is it a letter. Yesterday it was conceded on the other side that a recommendation of the Governor was necessary to give you jurisdiction. This is more than a mere letter; the charges are another matter that will come afterwards. This is a paper indispensable to your jurisdiction. Unless this message came from the Governor, and was communicated according to the constitutional requirement from the Governor to the Senate, it is as void as a blank paper—utterly, wholly void. It seems to me, therefore, that so far from this being a technical question, so far from its being a mere question of postponing the time of the conviction of this defendant, it was due by this defendant as a citizen, without regard to the effect it might have upon him, — when these facts came to his knowledge, that they should be presented. If it is true, as the counsel suggested, that it is the daily practice to take these important documents and alter them, then it is time the practice should be stopped. If it is true that the law-makers of the State are in the common habit of violating

the laws of this State in this particular, it is high time it should be prevented. I don't believe it. Whatever influence it might have upon the respondent, it was due, when these facts came to his knowledge, to present them for the consideration of the Senate. It was his duty, his right, and it is his right now to insist that you shall decide that he shall not be tried upon a paper confessed by the counsel upon the other side never to have been communicated to you. This question affects more than his interest. A record is to be made. As we progress in this case, the motions that are presented and the decisions that are made become a matter of record to be cited hereafter as authority upon questions like this. It seems to me that yesterday no very elaborate examination could have been given by the Senate of the question involved, and he can no longer insist on a preliminary by the Governor before the charges were preferred. Now it is to go upon the records of this Senate whether a defendant, coming before them to prove that a message was never delivered to the Senate, shall be allowed to prove it or not.

On motion of Mr. Gibson, the Senate was cleared for consultation.

On the doors being re-opened, the President announced that the Senate had decided to allow the respondent to prove the facts offered.

The Senate then proceeded to hear the proofs offered, as follows :

George S. Hastings, *called for the respondent, sworn:*

By Mr. Smith:

Question. Were you the private secretary of the Governor during the last session of the Senate? Answer. I was.

Q. Look at the paper which is now shown to you and state whether, on behalf of the Governor, you presented such a paper to the Senate when in session? A. I did.

Q. When? A. The 14th day of February, the date thereof.

Q. What was done with it upon its being presented to the Senate, as far as you know? A. I think I remained and heard the message read—at least a portion of it.

Q. The message that was then presented was read, was it? A. That is my impression; I am not positive about that however.

Q. In whose handwriting was it? A. It is in the handwriting of one of the clerks of the Executive department, Mr. Merchant.

Q. Sent by whom? A. By the Governor.

Q. Was there any portion of the message erased when you presented it? A. Not to my knowledge.

Q. Look at the second page of that message and see if the large line of a pen is drawn across a part of the text? A. I find the word "as" struck out.

Q. Won't you answer my question? A. Yes, sir.

Q. Was that so when you presented it? A. No, sir.

Q. Look at the bottom of the message and see whether the paper has any evidence of erasures having been made. A. Yes, sir.

Q. How much of it? A. The concluding words were written upon an erasure.

Q. Was that so when you presented the message to the Senate? A. No, sir.

Q. Where did you next see it after presenting it to the Senate? A. Upon my return to the Executive chamber. Do you wish me to state the circumstances?

Q. No sir. How soon after you presented it? A. Within fifteen minutes; I think within ten minutes.

Q. Do you mean to speak within any degree of certainty as to the time? A. No; but I returned shortly after.

Q. Whereabouts in the Executive chamber was it? A. When I saw it, it was in Mr. Merchant's room; the third room.

Q. Who was present in the room where the message was? A. No one, I think; except Mr. Merchant.

Q. Did he have it there? A. Yes sir.

Q. What was he doing with it? A. The change made over the erasure was being written at the time.

Q. Who was then in the room adjoining? A. The Governor and Lieutenant Governor; the Lieutenant Governor was just passing out of the room as I went in.

Q. Do you know how the message came down there? A. I cannot speak positively about that; the message was there when I came.

Q. Do you know what was done with it after Mr. Merchant was through with it? A. It was returned to the Senate.

Q. When? A. Immediately.

Q. By whom? A. I do not recollect; I do not know whether I returned it or not; I presume it was sent up by a messenger.

Q. You do not know? A. I am not positive who took it up; no sir.

Q. If you know, or have a distinct impression, state it? A. I have a distinct impression that the message was returned, but not by me.

Q. Do you know, or have an impression, as to who returned it? A. I could not state it; I think very likely Mr. Merchant may have returned it; I do not know how that is.

Cross-examination by Mr. Sedgwick:

Q. Will you state all the facts that came within your observation, in regard to the alteration in the message? A. I will premise by saying that the charges being verified in this case—

Mr. Smith: We object to the witness premising.

The President: You can hardly know what he intends to prove.

The Witness: I wish to state the reason of the change.

Q. State all the facts that occurred to your knowledge after the message was returned by the Senate, and when you saw it? A. The message, as framed originally, was upon the theory that the Senate—

Mr. Shafer: We object to that.

Mr. President: Confine your answer to the question.

A. These words were stricken out from the concluding sentence of the message: After the words "if in the judgment of the Senate" "he shall fail to disprove said charges or establish a satisfactory defense thereto," and these words were substituted "upon a full and fair investigation be convicted of the charges made against him." To adapt the message to this change the word "as" was stricken out in the preceding sentence and the words "I must assume that the charges presented to me and duly verified, are true."

Q. The Governor was present when this alteration was made? A. Yes, sir; he was in his room.

Q. He directed that alteration? A. Yes, sir.

Q. Did he send this paper to the Senate as it now stands? A. Yes, sir.

Q. That was on the 14th February? A. Yes, sir; it occurred within an hour of the time I delivered the message.

Q. [By Mr. H. C. Murphy.] Whom did he transmit it by? A.

By Mr. Merchant, I think; that is my impression; I recollect distinctly his sending it back.

Q. One of the clerks? A. Yes, sir.

Q. Is there anything else that occurred in connection with it? A. No, sir, not that I now recollect.

Re-direct examination:

Q. The words that were erased at the close of the message were scraped off the surface of the paper? A. Yes, sir.

Q. And substituted words were written upon the erasure? A. Yes, sir.

Q. Do you mean to speak with any degree of certainty in giving the words that were erased? A. I do; I recollect the language distinctly.

Q. Are you positive? A. Yes, sir; I may have left out possibly an article or some immaterial word. It may have read "said charges" instead of "the said charges."

Q. The last two words stricken out, according to your version, were the words, "defense thereto?" A. "Or establish a satisfactory defense thereto."

Q. "Defense thereto" were the last two words? A. Yes, sir.

Q. They were the closing words of the message, were they? A. Yes, sir.

Q. Look at that paper—look at the last two words—and say if they have ever been changed at all? Do not the last two words of the message stand there now as they were when the message was first presented? A. [After examination.] Those words were written after the message was written. The erasure extends only to the words, "charges made;" "against him" was added.

Q. Do you intend to be understood that the words "against him," as they stand there, were not a part of the original message? A. I do; I am very positive about that.

Q. The erasure, you say, extended from the word "shall" to the word "made?" A. The words erased I have given. These words were written and they occupy the space of the language erased from the original. "Against him" was added.

Q. Do you intend to be understood that you have a present memory of those two words being added? A. I have a present memory of the language of the original message.

Q. That is not the question. Have you a present memory of

those two words having been added—the words "against him?" A. Yes, sir, I have; I have refreshed my recollection by looking at the record in the Executive Department.

Q. What do you mean by a record in the Executive Department? A. We keep a record of all the messages sent to the Senate and Assembly.

Q. Is there now in the Executive Department a record of this message as it was communicated to the Senate? A. As it stands now.

Q. Is there a record of the original message? A. No sir; the record is made out from—

Q. Was there a record made of the original message? A. No sir; this message appeared in the journal of that day, and a copy was cut out, found to be correct, and copied in the journal of the Executive Department.

Q. Your recollection is refreshed by a copy cut out from the "Albany Evening Journal," a newspaper of this city? A. It is refreshed on some points—yes sir.

Q. State how that refreshed your recollection of those two last words in the original message—in other words, how could you say those two words, the concluding of the sentence in the "Evening Journal," refreshed your recollection as to what were the concluding words of the original message? A. It could not; I recollect the concluding words of the original message.

Q. Have you a present memory of what those two last words were in the original message? A. Yes, sir; I am very positive that the reading I have given is correct.

Q. And you depend entirely upon your memory in giving the language? A. Yes, sir; it is barely possible that—

Q. Was there anything else to impress the language upon your mind than your having read the message? A. I assisted somewhat in the preparation of the message, and was very familiar with it. Before it went in it was read over and discussed.

Q. Do you know the fact that the amended message was transmitted to the Senate? A. Yes, sir.

Q. How? A. I recollect the message being—the Governor directed that the message should be returned.

Q. Observe my question. Do you know the fact. Did you see it returned? A. That I cannot speak of. I do not know that it was returned to the Senate.

Q. All you know is that the Governor directed it? A. That the Governor directed the message to be returned.

Q. Do you know that the messenger left it? A. It was taken from the Executive Chamber.

Q. How it was disposed of you do not know? A. I cannot speak positively about that.

Q. [By Mr. H. C. Murphy.] Is the draft of the original message in the office of the Governor? A. The original draft is destroyed. I suppose it was retained until a copy was got out of the journal. My recollection is not clear about that. It is barely possible that the word "thereto" might not have been the concluding word; it might have been "to the same" instead of the word "thereto." I do not mean to say that I have used the exact language, but they were words to that import, I am positive.

James Terwilliger, *for the respondent, sworn*:

By Mr. Smith.

Q. Were you the clerk of the Senate of this State during its late session? A. Yes, sir.

Q. Was there a message presented from the Governor relating to the removal of George W. Smith? A. Yes, sir; there was.

Q. Do you remember when and by whom it was presented? A. My only recollection is from the journal, that on the 14th February it was presented by Mr. Hastings.

Q. On being presented, what was done with it? A. It was presented at the desk and read by me to the Senate.

Q. What was done with it then? A. I passed it over to my journal clerk; I suppose he affixed it to the journal.

Q. Was there any leave granted by the Senate after that to the Governor, or any one, to withdraw that message? A. Not that I know of.

Q. Does the journal say that any such leave was granted? A. No, sir; it does not.

Q. Is the journal full and accurate? A. As accurate as we can make it.

Q. You belive it to be accurate? A. Yes, sir.

Q. Was there any message upon this subject after that; communicated or transmitted to the Senate from the Governor? A. On the subject of charges against George W. Smith?

Q. Yes. A. No, sir.

Q. Was that paper that you hold in your hand, as it now appears, ever presented to the Senate as a message from the Governor? A. I think the paper I now hold never was; that is it was not read from the desk in this form.

Cross-examination by Mr. Sedgwick:

Q. Was that paper, as it now stands, copied upon the journals of the Senate? A. I do not know; that was done by my journal clerk.

Q. Does a copy of that paper appear upon the printed journal? A. Yes, sir; the printed journal.

Q. Then that paper was then in the possession of the officers of the Senate and copied upon the journal? A. I presume it was.

Q. You do not know who returned it? A. No, sir.

THOMAS G. ALVORD, *for the respondent, sworn:*

BY MR. SMITH:

Q. During the late session of the Senate, were you Lieutenant-Governor of the State, and President of the Senate? A. I was.

Q. Have you any knowledge of a message having been presented to the Senate, from the Governor, relating to the removal of George W. Smith? A. Yes, sir; I have.

Q. Do you know of the message having been returned to the Executive department, after presentation to the Senate and read? A. I believe it was informally in the Executive chamber.

Q. Will you be kind enough to observe the form of my question. Do you remember of the message having been returned to the Executive chamber, after being read? A. I propose to answer your question as I have before. I saw it informally in the Executive chamber afterwards.

Q. Informally in the Executive chamber, I suppose your remark applied to the other part. Do you know how it came there? A. I cannot state exactly how it came there.

Q. State what knowledge you have upon that subject? A. My impression is, it was carried out by one of the officers of the Senate here, a messenger or clerk.

Q. Can you speak with any degree of certainty? A. I cannot, with any great certainty. That is my impression.

Q. Did you advise or direct this to be returned to the Executive? A. I did not advise or direct its return to the Executive. I advised the Executive that there was ——

Q. Will you oblige me by answering my question? A. I did not advise or direct its return to the Executive.

Q. Did you see it while it was in the hands of the Governor, after being presented to the Senate? A. I saw it while it was on the table of the Governor, after being presented to the Senate.

Q. About how long after being presented to the Senate? A. Within less than an hour; I think within a very few moments.

Q. While the Senate was still in session? A. The Senate was in session at the time.

Q. Did you leave the chair, as presiding officer of the Senate, to see the Governor in respect to the message? A. I did, sir.

Q. Did you there advise its alteration? A. I advised change of the language, because I thought it was unfortunate in expression in the latter part of the—language—the concluding words.

Q. Did you have a consultation with the Governor in respect to the change that had better be made? A. I spoke to him in regard to it.

Q. Did you confer with each other—did you speak to him and he to you? A. It was a very quickly done work. I merely mentioned the slight alteration which I presumed would make it better, and sound better, as far as the mere language was concerned in it, and he acquiesced in it at once.

Q. Now, Governor, if you will answer my question. A. I have answered it.

Q. Did you have a consultation with the Governor in respect to the change to be made? A. I had a consultation in the mode.

Q. I insist upon an answer? A. I cannot answer it any further.

Q. Did you express your opinion to the Governor in reference to the change which should be made? A. I advised it.

Q. Did you express your opinion in reference to the change that should be made? A. I advised it in the way I say.

Q. Will you answer the question? A. I have, sir.

Q. Cannot you give a more definite answer. A. No, sir.

Q. Did you express any opinion to the Governor in that interview in reference to the message? A. None whatever, except merely in regard to the phraseology I have spoken of.

Q. Did you advise a change of some portion of the phraseology for the message. A. I advised the change I have spoken of.

Q. Did he advise with you? A. He acquiesced in it.

Q. Was it made? A. I believe it was.

Q. Is that the message? [Presenting the message to the witnesss.] A. I cannot say. I cannot tell whether this is or not.

Q. Give us your best judgment upon that subject? A. It is his handwriting; it is in the usual handwriting.

Q. In your judgment is that the message as it was corrected at the interview between yourself and the Governor? A. I cannot say.

Q. Do you believe it to be? A. I think very likely it is.

Q. Cannot you speak with greater certainty? A. I cannot; there was a copy down there of the message; the one that was sent here and this is in exactly the same handwriting; I cannot tell whether this is the same or not.

Q. Did you know at the time of the act of the message being taken from the Senate chamber? A. My impression is I did.

Q. Do you know who returned it? A. I think the same party who took it down returned it; it was in the custody of either a messenger or clerk of the Senate down in the room of the Governor, and brought back by the same party here.

Q. What was done with it after it was brought back? A. I think it was handed to the journal clerk.

Q. Do you remember who the journal clerk was? A. I cannot recollect whether it was Mr. Dayton, who is now acting as journal clerk, or not. He was, during a portion of the session, unwell, and was absent for some two, three or four weeks, and in the intermediate time Mr. Burdick acted as journal clerk. But whether it was at this time I cannot say.

Q. Was any leave granted by the Senate to withdraw the message? A. None whatever—no formal leave.

Q. Was any leave granted, formal or informal? A. No leave on the part of the Senate, such as you would consider a leave.

Q. Or any announcement to the Senate that it was withdrawn? A. No, sir.

Q. Was there any announcement to the Senate that it was returned? A. No, sir.

Q. Was there any announcement to the Senate of the change that had been made in the message after it was presented? A. Not to the Senate.

Cross-examination waived.

GEORGE W. DEMERS, *for the respondent, sworn:*

By Mr. SMITH:

Q. During the late session of the Senate, were you engaged as a reporter of its proceedings? A. Yes, sir.

Q. For what paper? A. The "Albany Evening Journal."

Q. At that time were you one of the editors of that paper? A. I was.

Q. Do you remember the circumstance of a message having been presented from the Governor to the Senate, relating to the charges for removal of George W. Smith? A. I do.

Q. Did you see that message as it was presented? A. I did.

Q. Who presented it? A. It was presented by the private secretary of the Governor.

Q. Formally? A. Formally.

Q. How soon after that did you see it? A. Within five minutes—less than five minutes.

Q. Did you copy it? A. I did.

Q. How did you come by the message? A. From the journal clerk.

Q. Was it handed to you in the ordinary course of reporting such documents? A. It was handed to me by request, as I usually obtain such documents.

Q. Did you make an accurate copy of it? A. I did.

Q. What was done with the copy? A. It was sent to the office of the "Journal."

Q. For what purpose? A. For publication on the part of Senate proceedings.

Q. Was it published?

[Objected to by Mr. Sedgwick, on the ground that it is immaterial.]

THE PRESIDENT: It may be material by way of identification.

Mr. SHAFER: Mr. Hastings based his recollection upon the copy that was obtained from the "Journal."

Q. Was it published? A. It was not published as I reported it.

Q. Look at the paper before you—is that the message as it was presented? A. [After examination.] I should say this was the copy I had, with alterations.

Q. Is this the paper you copied? A. Yes, sir, to the best of recollection.

Q. Does the paper appear to have been altered since you copied it? A. It does.

Q. In what respect? A. There are erasures upon it, with a pen which were not here when I copied it.

Q. Are the erasures with a pen so made as to leave the text legible? A. They are.

Q. Will you read that part which was erased? A. The word "as," in one line.

Q. In what sentence? A. After the words "upon an *ex parte* presentation of the case, and" the word "as" is stricken out, and then follows the words "this course would seem essential to confer jurisdiction upon your body." Then the following sentence: "I must assume that the charges presented to me, and duly verified, are true," are crossed with a pen. They were not crossed when I made the copy.

Q. Look at the closing of the message and say whether the paper bears evidence of writing having been scraped off? A. Yes sir; it does.

Q. Over how much paper? A. Over a line; a little over the length of a line.

Q. Was that so when you copied it? A. It was not.

Q. Have other words been written over the erasures than those which were there when you copied it? A. Yes sir.

Q. What words have been substituted? A. "A full and fair investigation be convicted of the," I should think.

Q. What words were originally there? A. I can only state from recollection, which is somewhat distinct; the sentence, as I remember it, read in this way—

Q. I want the words originally there, in place of the words now there? A. "Upon trial fail to disprove the charges which are," are stricken out; "he shall upon trial fail to disprove the charges which are."

Q. Read the whole sentence as it was originally. A. From the beginning of a paragragh?

Q. Yes? A. "I do therefore recommend that the said George W. Smith be removed from his said office, if, in the judgment of the Senate, he shall upon trial"—I do not know but what it might have been "a fair trial;" I can not be precise about that; "fail to disprove the charges made against him," as I remember.

Q. Will you state the first circumstance, if one existed, which brought your attention particularly to the phraseology of that recommendation? A. The first circumstance was in copying; the peculiarity of the phraseology struck me as different from the

practice of the law, and I called the attention of Mr. Manning, who sat at the adjacent desk, to the fact.

Q. Was there any circumstance that has since occurred calling your attention to the subject during the same day? A. I came to the office in the afternoon, and I found that the message, as it was printed in the paper, was materially altered, and was led to notice the alterations there.

Q. Was there a circumstance after the first you have mentioned, and before the last; was your attention called to it in reference to the change? A. Not otherwise than by the presentation of the fact, in the first instance, to my mind, and the conversation which grew out of it. There was considerable conversation about the desk on the subject.

Q. After your conversation with Mr. Manning and your copying the message, were you asked to change your report of the message? A. I was.

Q. How to change it? A. I was asked to substitute words which are in the document I have.

Q. Did you do it? A. I did not. I declined to do it, as I thought I had no right to alter the proceedings of the Senate. I was here to report the proceedings as they were presented.

Q. Do you speak with any degree of certainty as to the closing words of the sentence as they stand now? A. I can only speak with a certainty which I have of recollection; that seems to be very definite and very precise.

Cross-examination waived.

MR. SMITH: This we deem sufficient evidence for the offer we have made.

THE PRESIDENT: Has the counsel for the prosecution any evidence?

MR. SEDGWICK: It is now near the hour of adjournment. We may desire to call a witness upon the subject. We desire to consult a little in relation to it, and will call him on the opening of the court this afternoon, if we call him at all.

AFTERNOON SESSION.

The Senate re-assembled at four o'clock, when the hearing was resumed.

THOMAS G. ALVORD, *for the prosecution, recalled:*

By Mr. SEDGWICK:

Q. I will enquire whether since your examination you have referred further as to the taking of the message to the Governor's room. Can you state now from recollection who it was? A. I have reflected upon the matter, because my attention was called particularly to it by enquiry since that time, and I am satisfied that I took it myself.

Q. It was on that occasion that the occurrence which you have stated took place in respect to its alteration? A. Yes, sir; and I brought it back myself on the same occasion.

Q. Can you state what the practice is in regard to communicating messages from the Senate to the Assembly, as to whether they are laid on the table?

Mr. SMITH: We object to the question.

The PRESIDENT: I think that the question is too general.

Q. Is it the custom of the Senate to receive messages, and have them laid upon the table of the Senate, without their being read at the time of presentation, and read afterwards?

Mr. SMITH: We object upon the ground that the question is immaterial. The only important inquiry here is to what was done with this message. And further, that if proof of custom is admissible at all it should be confined to this class of communications, and it is not pretended that a communication of this kind was ever made before.

The Senate sustained the objection.

Q. Is there anything else in regard to the matter that has occurred to your recollection since your examination this morning? A. Nothing particular.

REUBEN E. FENTON, *for the prosecution, sworn:*

By Mr. SEDGWICK:

Q. Do you remember sending a special message to the Senate in February last, with reference to the charges preferred against the county judge of Oneida county? A. I do.

Q. Was that message returned to you at the Executive Chamber, if so, state by whom, and the circumstances attending it? A. My

private secretary, I think, left the Executive Chamber with the message, and soon after, five or ten minutes perhaps, it was returned to the Executive Chamber by the Lieutenant Governor, who suggested a modification of the language in the concluding paragraph. I accepted the suggestion and made the modification in accordance with his views, wrote it with pencil and handed it to my copying clerk who had copied the message originally, and who gave it to the Lieutenant Governor, who, I suppose, proceeded to the Senate with it.

Q. It was changed according to your alteration by your clerk under your direction? A. Yes, sir, entirely.

Q. Had you seen the message after your private secretary took it out until the Lieutenant Governor brought it in? A. I had not.

Q. Had you at the time of this occurrence, any knowledge or intimation from any source that any action had been had upon it in the Senate, or that it had been read in the Senate? A. I had not the least; I have no recollection of any intimation or remark being made to me by the Lieutenant Governor or any other person, that the message had been communicated to the Senate.

Q. State your best recollection as to the time that elapsed from the time you sent it until the Lieutenant Governor brought it you? A. I stated my general impression, that it was five or ten minutes; it seemed to me to be but a minute—it was very soon—my private secretary had left the Executive Chamber but a few moments when the Lieutenant Governor came; it might have been two or three minutes and it might have been ten minutes; I do not think it was beyond ten minutes, possibly.

Q. Had your private secretary returned when the Lieutenant Governor came in? A. No, sir; he came soon after; he came about the period the Lieut. Governor was leaving the chamber, I think.

Q. While he was still there? A. Yes, sir; I know I directed him to take the manuscript alteration and have it entered upon the journal.

Q. Then, the message as it now stands is a message which was sent to the Senate by your sanction?

Mr. Shafer: We object; that is a matter of inference and deduction.

Mr. Sedgwick: It is a question of fact whether it was sent by his sanction.

Mr. Shafer: The question in technical language calls upon the

Governor to express his opinion, and notwithstanding our great respect for the opinion of the Governor, we cannot, without objection, permit him to express his opinion that the message was transmitted to the Senate after it was thus altered. The question calls upon the Governor, not to state the fact, or what was done, and leave the inference and conclusion to be drawn by the Senate, but it calls for inquiries, whether in his judgment it was a transmission of the message to the Senate. With respect to the judgment of the Executive, we submit, that it is a question upon which the Senate must pass.

Q. Was the message as it now stands upon the Senate Journals, sent to the Senate, as it now stands, with your sanction.

Mr. Shafer: We object for the reasons as stated, that it calls for the opinion and conclusion of the Governor. He must state the facts and leave it to the Senate to determine whether it was sent.

The Senate overruled the objection.

A. I have not seen the Journal of the Senate.

Q. It stands upon the Senate Journal as the paper now appears? A. I would be glad to see the paper.

Q. (Handing witness paper) It was the paper as it now stands upon the Senate Journal (assuming that it is that paper) sent to the Senate by your sanction? A. It was sir.

Cross-examination by Mr. Smith:

Q. Did you make any communication to the Senate in reference to this message, after the original message was sent by your secretary, and before the Lieutenant-Governor returned it to you? A. I did not.

Q. Then the message was returned to you without any request on your part that it should be returned? A. It was.

Q. Was it suggested by the Lieutenant-Governor at the time he returned it, that the message in the form it was then, was irregular or defective? A. No, sir, I think not; if you will allow me, the Lieutenant-Governor asked me—

Mr. Smith: I think the question is sufficiently answered.

The Witness: I think not in just that manner. I will be glad to make this explanation with the answer, if it is proper. The Lieutenant-Governor suggested whether the modification as it now appears would not be preferable, and indicated his opinion that it

would. I do not recollect that he said or intimated that the message was defective or irregular.

Q. Was the suggestion of the Lieutenant-Governor confined to the concluding paragraph of the message? A. It was, I think, entirely; I changed the phraseology in one or two lines of the paragraph, preceding the closing paragraph, to make it conform to the modification in the concluding paragraph.

Q. Was it suggested by the Lieutenant-Governor at that time, that by the message as it stood, you improperly put upon the accused the burden of proving his innocence? A. I recollect my my reply and the suggestion of the Lieutenant-Governor very well.

Q. The question calls for the suggestion and and not the reply. A. I am not certain as to whether the Lieutenant Governor made this remark.

Q. Did the Lieutenant Governor give any reason why he thought the change was preferrable? A. None to my recollection, except in substance that it would allow the accused greater latitude, or would be more liberal in the construction of the evidence in the defence that he might be called upon to make.

Q. Was it not suggested that the form of the message changed the burden of proof from the prosecution to the defense? A. I think not, though that might reasonably be inferred; I do not know that any such suggestion was made; the interview between the Lieutenant Governor and myself was exceedingly brief, and I think was ended with a sentence or two. After the suggestion was made by the Lieutenant Governor, I readily acquiesced in it and ordered the change immediately, and he left the Executive Chamber. Very little conversation occurred between us.

Q. Can you state, with any greater certainty than you have already done, whether it was discussed between yourself and the Lieutenant Governor that the change was proper because it relieved the defendant from the burden of proving his innocence? A. Nothing passed between the Governor and myself beyond what I have stated; I think very little if anything.

Q. Who delivered the message to the Lieutenant Governor after the alteration was made? A. I cannot say; I was at the table.

Q. Do you know the fact that it was delivered? A. That is my recollection, that the Lieutenant Governor received it and left the Executive Chamber with it.

Q. Was there any direction given to him which you can now

testify to with certainty as to what he should do with the message? A. No, sir; I think not any direction.

Q. None whatever? A. No, sir.

Q. Did you at the time know what he intended to do with this or anything that was said or done? A. No, sir, I did not; I did not know from anything that was said.

Q. My question is, did you at the time know what he intended to do with the message, from anything that was then said or done? A. No, sir.

Q. Did you transmit this message to the Senate after the alteration was made, in any other manner than by delivering it to the Lieutenant Governor in the manner you have described? A. No, sir.

Q. Did you in any wise communicate with the Senate upon the subject of this alteration, notify them of its alteration, or make any other suggestion on the subject, other than by the delivery of this message to the Lieutenant Governor, in the manner you have stated? A. I did not; I communicated with one of the reporters in reference to a copy for the press, but not with the Senate.

JAMES TERWILLIGER, *recalled for the prosecution:*

By Mr. SEDGWICK:

Q. Does it appear from the journals of the 15th of February that the proceedings of the previous day were read in the Senate on that morning? A. It does, sir.

Q. Have you any recollection independent of the entry upon the subject as to whether this message was read that morning or not—the morning of the 15th? A. I have not, sir.

Q. The proceedings of the previous day were read and approved as entered on the journal of the 15th? A. Yes, sir.

Cross-examination by Mr. Smith:

Q. Have you knowledge enough upon the question as to whether the message was read to say whether you have an impression or not? A. I have not; I have no recollection on the subject whether it was read or not.

The counsel for the respondent submitted the following:

Insisting that the facts upon which the motion to dismiss was presented have been fully proved, the respondent now renews and insists upon the motion to dismiss these proceedings upon the grounds stated when the motion was originally presented.

The counsel announcing that they had no more evidence, Mr. Shafer, in behalf of the respondent, addressed the Senate as follows:

Mr. President, I hardly know how to conduct this discussion, inasmuch as in our remarks on the objection raised by the counsel for the prosecution to our right to prove what has been admitted, the whole ground was, to some extent gone over, if not entirely covered; and I am of the impression that little can be said, especially on our side, in addition to what was then advanced. Indeed I must be allowed to suggest in view of the extended discussion upon that occasion, and in view of the statement of the counsel for the prosecution as well as of the respondents, what the facts substantially would be, (and the proof conformed to that statement) that the question is *res adjudicata;* that is, having proved what we offered to under an objection that if we did prove that, it made no sort of difference, and the objection having been overruled, it is substantially a decision that the proof justifies a dismissal of the charge. The charge was, in the offer that we made, that the message had been wrongfully and unlawfully abstracted from the files of the Senate, and wrongfully and unlawfully altered after being thus abstracted, and after being thus altered was palmed off upon the Senate and substituted in place of the original message. That was the charge, and that instead of the original message as it was delivered to and read to the Senate, being now in the possession of the Senate, they have not even a copy of it, but a paper which, in fact, never emanated from the Governor in any official capacity, and a paper which, in fact, was not sent by the Governor to the Senate as a communication from him, unless a communication between co-ordinate branches of the Government can be carried on in the peculiar manner which the evidence has shown. I hardly know whether it would be safe for me or for the respondent, after the argument which I advanced this morning, to extend my remarks to any length, but I beg leave to be allowed to cite authorities, some of which I referred to, and some of which I had not then at hand, for the purpose of more fully explaining our views in reference to the question of the jurisdiction of the Senate. I shall not stop to discuss it, for it is conceded that the Senate does not possess original jurisdiction to institute a case of this character with the view of removing an incumbent from office. The ground of objection

that was urged this morning was, that the journal of the Senate must be regarded as absolutely true, so much so that it is impossible from evidence outside of the journal to prove its falsity. Do I understand that that position is still insisted upon by the counsel?

MR. SEDGWICK: It has been decided that you were to give evidence, and under that ruling you have given it.

MR. SHAFER: I did not know but the gentleman still insisted upon that doctrine, and I have a case before me in which the court for the correction of errors seriously debated whether the journal was admissible at all; but the court decided that from public necessity the journal was admissible as *prima facie* evidence of what it contained, but that the other party could disprove and show that it was wrong; so that if there was any doubt upon that question, the court for the correction of errors has disposed of it. I showed this morning, from 2 *Bouvier*, that this message which was delivered to the Senate was a record, and not only a record, but a record of the highest character. I beg leave to call your attention to the precise language used in a later edition of *Bouvier*.

"*Record.*—A written memorial made by a public officer, authorized by law to perform that function, and intended to serve as evidence of something written, said or done. Records may be divided into those which relate to the proceedings of Congress and the State Legislatures, the courts of common law, the courts of chancery and those which are made so by statutory provisions. The acts of Congress and of the several Legislatures are the highest kind of records. The printed journals of Congress have been so considered."

Very well. The public documents transmitted by one branch of the Government to the other, or from one co-ordinate branch to the other are thus placed upon the ground of the highest kind of public records. Well may it be so. I would like to know if a message received by Congress from the President or by the Legislature from the Governor is not more important than the record of a deed or title to a farm recorded in the county clerk's office. I would like to know if it is not infinitely more important than the record of a judgment giving to A. B. eighty or a hundred dollars. It is so because it interests the people, because its object is to protect the public interest and because it is a record of a graver nature than that which affects private individual interests or private property, and hence it was held that they are records of the highest

possible nature. Now, if I am right in this particular, that it is a record of the highest possible nature, even more so than a deed that could be delivered to the Senate; even more so than any parchment that could be placed in the Senate coming from any source other than the Executive—then the simple question is whether this record, this public message, which, in the eye of the law, is sacred; which no ruthless hand has a right to touch; which no person has a right to remove from the files of the Senate, which is the repository of it, can be abstracted by anybody from its files and returned to its author, to be secretly and covertly altered, and then returned to the Senate. That is the question which, for the first time in the history of the State or the United States, has arisen in any legislative body of which we have any knowledge. Why has it not arisen? I submit because there has never been any such precedent. I submit that it has not arisen because, in my judgment, the necessity seemed never to have existed before in order to put a man upon trial that this peculiar process should have been gone through with. The ordinary mode is for a respectful message to be sent by the Governor to the Senate for the document. It is returned to the Governor, and after it is altered it is returned to the Senate with a respectful message, and thus the proceedings are made regular. I submit and protest that, aside from the questions of strict law, no legislative or judicial body can for a moment sanction the tampering with its record. It is not to be dreamed of for a single moment. The idea is abhorrent that the President of the Senate and the Governor of the State can take from the Senate a message that has been delivered to it and alter it to suit their particular notion, and then return it to the files of the Senate. This is a question of grave public importance. While I speak thus plainly, I need not say that I have the highest respect for the presiding officer of this body, having been a member of it and one year under his presidency, and having spent that year with relations of the utmost pleasantness between us. But, when it becomes my duty, either in behalf of the public or of my client, to condemn what I believe to be an illegal and unauthorized act, destructive of his rights and the rights of every citizen, I cannot mince words or refrain from speaking of the Executive, not unkindly or unfriendly, but in the plain manner in which his act deserves to be characterized. Has this message been altered? Is the message which stands printed upon the journal and in

printed document 48 the message that was sent to this Senate by the Governor? Where is the member of this body who has the hardihood to say it is? The message which stands printed upon this journal by the confession obtained from its author, and by the confession obtained from one of our judges, came from the Executive Chamber not through the common channels through which messages of a like character come, but through an unnatural channel it found its way back to the Senate altered and changed without the knowledge of this respondent, without the knowledge of the Senate, and without the knowledge of any living being except the Governor, the Lieutenant Governor, and the scrivener. I repeat it, that it is probably the first time in the history of this Senate, or of the Legislature, that a scene of this character has been enacted. Was it altered? That is confessed. How was it altered? I make this inquiry, because I shall endeavor to show this Senate the danger of allowing even the crossing of a "*t*" or the dotting of an "*i*" by the Governor after it has been once delivered, without a formal message asking for its return. The private secretary of the Governor gets on the stand, and says "thus it was altered." I do not, of course, speak in any unkind terms of the Governor's private secretary. I believe him to be an estimable young man, but I believe him to be very zealous in endeavoring to put upon this act the most favorable construction. That is laudable in him. I find no fault with that. He says "thus was it altered. I am clear and positive it was thus altered." And yet when my distinguished associate puts him to his recollection, he states that he relies upon the printed copy of the message as it appeared in the *Evening Journal*, and which, as it turns out, was a falsified copy of the message, and which could not have aided him in the least in showing what the original was. Another witness gets on the stand, equally intelligent and equally respectable, and equally observing, and he says "the original message is not as you, Mr. Private Secretary, said." Does not this illustrate the folly and the madness of entertaining the idea for a single moment that any sacrilegious hand may be placed upon a public document and alter it, and then that we may rely upon the memory of A and B as to how the original document reads? This of itself demonstrates that no one has a right in the least degree to tamper with the public records or public documents. Is this the message that was sent to the Senate? No. What was the message that was sent to the Senate? You cannot from all the evidence

determine what it was unless you take the version of one of these witnesses, and if you do, you say that the other has testified falsely, or that the recollection of the other is not correct; and I submit that you cannot continue the trial, because you cannot tell what was the message which was originally sent. We stand here demanding, inasmuch as that message is essential to confer jurisdiction, and it is not produced, that you show by what authority you assume jurisdiction to try the respondent. We stand here and deny that the message which you say is the Governor's message was ever sent to the Senate, and we prove it; and yet, it will be claimed in view of all these facts that the Senate may go on and try the respondent, for what, they know not, and adjudge him guilty of what, they know not, because the recommendation does not state the causes for which he is to be removed. You have no evidence in reference to that upon which you can rely. Ah! but they say "it was altered for your benefit, and upon the principle that we are generous to you, you are uncharitable in denying that the act is illegal and without authority." Mr. President and gentlemen (and I say it with great respect before this august tribunal), you must allow us to protest against that act being for our benefit, when one of our judges takes our indictment down to our accuser and patches it up to suit his judgment. Such a scene has never been witnessed since the days of Jeffries. Never in later years has the judge descended from the bench to advise the prosecutor as to the form of the indictment, and then sit in judgment upon the trial of the accused.

THE PRESIDENT: I desire to say that there is nothing in the Constitution which leads me to suppose that the presiding officer is a judge in the trial of this case.

MR. SHAFER: If there is a tie, as President of the Senate, you have a casting vote. I certainly understand the law otherwise from what the President has just stated it, and I am entirely clear, I think, in reference to that. In the impeachment of MATHER, again and again and again did Lieut. Governor CHURCH, who was then President of the Senate, vote, without his right being questioned. That was a proceeding before a court for the trial of impeachments, which was made up in part by the Senate. If I am not mistaken, if a tie should occur on this very question, the President of this Senate would be called upon to give the casting vote.

THE PRESIDENT: The counsel for the defense is mistaken in saying that the President of the Senate is one of the judges in this

case. By section 1 of article VI of the Constitution he is made, in express language, one of the court for the trial of impeachments; but the 11th section of the same article expressly provides that "a majority of all the members elected to the Senate," shall alone, by the ayes and noes entered on the journal, remove.

M. SHAFER: Now, sir, this is the Senate. We are not in the court for the trial of impeachments. Let us see what the office of the Lieutenant Governor is. "The Lieutenant Governor shall possess the same qualifications of eligibility for office as the Governor. He shall be President of the Senate,"—you are not only Lieutenant Governor, but President of the Senate—"but shall only have a casting vote therein." Sir, there can be no doubt of the construction of this provision, for we are in the Senate of the State of New York, and not in the court for the trial of impeachments. As President of the Senate, in case of a tie you have the sole vote which determines, for weal or woe, the fate of this respondent. That alteration, they say, is not to our prejudice. We say it is not necessary that it should be to our prejudice. It is enough that it has been made intentionally and designedly. It was made with the knowledge on the part of the Honorable the presiding officer, that it had been read to the Senate; that there had been no message from his Excellency calling it back; and that it was returned by his Excellency to the Senate without any communication in writing sending it back. If I were called upon I would claim that this was not only an alteration, but a fraudulent alteration, by reason of the knowledge possessed by the presiding officer of the Senate. I showed the Senate this morning that the alteration of any instrument, whether public or private, rendered it void. Now I concede, that if one of the clerks of the Senate, or if I, had stepped into the Senate and made this alteration, it would never affect this message. Why? Because I was not its author; because it was not addressed to me. But the position we contend for is, that if he who presents the indictment, whose jurisdiction it is to present it, and he whose jurisdiction it is to try it, together change it, although they change it in but a line or word, thereby the instrument becomes void, and cannot be the ground of action on the part of the Senate. I cite the authority to prove that proposition from 1 Greenleaf's Evidence. I supposed I had it here, but I have not. And here I want to draw this distinction between the changing of a public document and the changing of a private instrument. The position which I shall contend for is this: That

where a public document or public record is changed and altered by reason of the interference of those who originated it, or those who are to try it, it is absolutely void; and I have undertaken to give some reasons why that is so. I have undertaken to show that it cannot be tampered with in any way, manner or form. Now let me refer to 1 *Bouvier*, under the title Forgery. In the fourth definition he says:

"The making of a whole written instrument in the name of another, with a fraudulent intent, is undoubtedly a sufficient making; but a fraudulent insertion, alteration, or erasure, even of a letter, in any material part of the instrument, whereby a new operation is given to it, will amount to a forgery."

Now I do not want the Senate to misunderstand. "A fraudulent insertion, alteration, or erasure, even of a letter, in any material part of the instrument, whereby a new operation is given to it, will amount to a forgery." The first three erasures that are to be found contained the word "as," and contained the words "I must assume that the charges presented to me and duly verified, are true," and it is claimed that it contained a recommendation that if the respondent did not disprove the accusations he was to be convicted. As it now stands it is changed. As the message stood, the respondent must prove his innocence or be convicted. Was the "operation" of the message changed by the alteration? It was changed in that respect. The Governor now says, "I will not assume to say that you are guilty, I will not assume to say that you are innocent; I will not place the burden of proof upon you, but I will allow you the same rights that are allowed to others under like circumstances." That was a new operation of the message in that respect. In the one he says: "Sir, upon this simple affidavit *ex parte*,—no cross-examination of witnesses,—no opportunity to be heard in your defense, I assume that you are guilty." In the other he says, "I will never assume your guilt or innocence; I will leave that matter to the Senate." In the message as originally sent to the Senate with the recommendation, he says: "I assume your guilt to be conclusive unless you disprove it." Now, I would like to know whether he has not changed portions of it. He says in the message as amended, "I will not assume your guilt, but I will recommend that the Senate investigate these charges." In the original one he made the presumption conclusive that he was guilty upon *ex parte* affidavits, unless he proved his innocence. In the other he says: "I will

not assume your guilt,—I will not assume that you are guilty, and will not call upon you to disprove your guilt." Are not these portions changed? They cannot argue to you that it was changed for our benefit or injury, because I will show that it makes no difference whether an injury is done us or not. It is enough that he did change it, whatever may have been the motives. It is the difference between guilt and innocence. The difference between day and night, life and death, is the difference between the two messages, and yet we are told it was not a material alteration. Now, I am arguing it upon the theory that we must show material alterations in order to bring the case within the rule of the old common law, where the material alteration of a private instrument avoided it. So much for its materiality. Shall it be now heard that two of the highest officers of the State may deliberate over an indictment which one of them has deliberately drawn up, and after the discovery that it was wrong, be allowed to alter it, even though they do it with the best intention? Singular, indeed, that would be. The Governor thought it was wrong or he would not have changed it, and I am sure that the Honorable the Lieutenant Governor, would not advise the change unless it was the conviction of his mind that it was wrong; that it was essential to its validity and operation that it should be modified in the particular suggested by him. Hence it was done, and well done. The presiding officer's head is as clear as that upon the shoulders of any man in the State, and though not practically in the legal profession, I know of no one who would have made a more able and distinguished lawyer. At a glance he saw the error; he submitted a suggestion for a correction and it was acted upon. The Lieutenant Governor accomplishes it. The Governor interlines it in pencil, and then the Clerk writes it out. But the Lieutenant Governor, after all, puts it in motion. Now, I have read from one authority, and I beg leave to call the attention of the Senate to another. The next authority is 1 *Hawkins' Pleas of the Crown*, where, in speaking of what voids an instrument, he says:

"Forgery by the common law seemeth to be an offense in falsely and fraudulently making or altering any matter of record; or any other authentic matter of a public nature, as a parish register, &c."

In section 7 he says:

"It seemeth to be no way material whether a forged instrument to be made in such a manner that it were in truth such as it is counterfeited for, would be of validity or not; and upon this

ground it hath been adjudged that the forgery of a protection in the name of A. B., as being a member of Parliament, who in truth at the time was not a member, is as much a crime as if he were."

And the eighth section provides:

"And first it is clear that one may be guilty thereof by the common law, by counterfeiting a matter of record; for since the law gives the highest credit to all records, it cannot but be of the utmost ill consequence to the public to have them either forged or falsified."

That it has been falsified we all agree. We do not like to charge the technical offense of forgery. (I see the President smiles.) We make no charge of forgery; but the question is as to the legal effect, not what the intent was. It has been falsified. The message as published in the printed document is not the message that was sent here. The message that was served upon us accompanying these charges was not the message that was sent here, and that is enough to render it void. Now, *Hawkins* says in the 9th section:

"Also there seemeth to be no doubt but that one may be guilty of this crime by the common law, by forging any other authentic matter of a public nature, as a privy seal or a license from the barons of the Exchequer to compound a debt, or a certificate of holy orders, or a protection from a parliament man."

The distinction I propose to make now is this: It is not essential in order to render a public document void that anybody should be injured by it. It is immaterial whether anybody is injured or not, so long as it has been altered. Before any man can be convicted for altering a private instrument, it must be charged that it was altered with the intent to defraud some one. Suppose the forgery of a promissory note—the intent must be to injure and defraud the party whose name it is claimed has been forged. That is not so of a public document; that is not so of a public message. The distinction is that the public document—the public message—the whole people are interested in it, and you could not allege or prove the intent to defraud the whole people. No such question as that could ever be raised on an indictment or prosecution for the forgery of a public record. Hence this rule has been established and this distinction has been drawn. As to private writings there must be an intent to defraud. As to public writings whether the intent exists or not, or whether the party is injured or not,

because of the sacredness of the instrument it is an offense, at common law, to change even in the least degree. Now, the author had gone on to show, first, that it was an offense at common law to forge a public document. He goes on and discusses the doctrine as to the offense of changing or altering private instruments, in which private parties alone are interested. He says, in reference to the distinction:

"But perhaps it may be reasonable to make this distinction between the counterfeiting of such writings, the forgery whereof hath been already shown to be properly punishable as forgery, and the counterfeiting of other writings of an inferior nature, that the former is in itself criminal, whether any third person be actually injured thereby or not, but that the latter is no crime unless some one receive a prejudice from it."

The changing of a public record is of itself an offense, upon the ground that no one has a right to tamper with it, or touch it, or change it. Now, I need hardly cite authorities here to this intelligent Senate, to show that the changing of a single word or single line, in any material portion, would render the whole writing void. I now read from 1 *Greenleaf*, page 109:

"But in the proof of the charge, it is not necessary to show that the entire instrument is fictitious. The allegation may be proved by evidence of a fraudulent insertion, alteration or erasure in any material part of a true writing, whereby another may be defrauded."

That is the offense as to private writing. You change the word "500," in a promissory note, to "5,000," the whole note is gone. The alteration, erasure or interlineation of a single word renders the whole of it as void as though it had never existed. Of course it must be so, or there could be no such thing as rendering void any instrument, because in its effect and operation the changing of a single word may be as great as the re-writing of the whole instrument. Now, I submit that we have shown most conclusively that this record, this indictment, this recommendation, has been most materially changed or altered, and that the Senate cannot inquire whether it is for our benefit or for our injury. Is it allowable? is it permissible? Suppose my learned associate, who has the honor of acting as public prosecutor of this county, should, in his capacity as district attorney, present to the grand jury an indictment, and they should pass upon it and certify it to be a true bill, and the foreman delivers it

to the court and it is entered upon the record. My learned friend when he comes to prepare the indictment for trial, examines it to see whether it in all respects conforms to the law, and whether it cannot be improved in some form. I walk into his office and I suggest to him in this respect the indictment may be changed, that I think he showed bad pleading in this respect and an ignorance of the common law in that respect, and at once he directs his clerk to change the indictment. John Doe is arraigned on that indictment. He says "that is not the indictment which the grand jury found." "Ah!" but, says my friend, "it was altered for your benefit, and you have no right to use that fact in your defense." That is the doctrine they want the Senate of the State of New York to establish in this case; that is the doctrine that the other side claim can prevail and be sustained by this high and august tribunal. It is a doctrine abhorrent to every principle of law, civil and criminal. If there is any pretense that civilization improves in the known safeguards which have hitherto been thrown around society; if there is any pretense that law is desirable, that verity and truth shall prevail in public records; if this idea is of any value, it must be entirely disregarded before there can be even a thought on the part of the Senate of tolerating the further jurisdiction of the question upon a recommendation which is changed, as we clearly show. To make the case clear, to show how indifferent it is whether it prejudices or benefits, suppose the Governor had said in his first message precisely what he says in this, "If the Senate, upon a full and fair investigation shall determine that he is guilty of the charges against him, I recommend his removal,"—suppose that was his language, and that then it had been changed by saying, "I recommend that he be removed, unless he satisfies the Senate of his innocence," that would be against him and to his prejudice. It changes the rule of law. In one case the presumption would be that he should have a fair trial, according to the recommendation and judgment of the Executive, and that after a fair trial, if found guilty, to be removed. In the other it would be incumbent upon him to prove his innocence. Would it add anything to our argument to say you have made it a rule more difficult—you have put upon us the burden of proving our innocence, instead of the prosecution proving our guilt? Is there any scale that would determine in the minds of Senators about this circle—that would

enable them to say it was more or less material? When you find that the vital portion of a message has been changed or altered in the manner we have described, it is not permissible for you to say which end kicks the beam—which is most favorable or the most unfavorable. I say this paper is unclean and unholy, and cannot be the basis of your action. You should say "this document has ceased to have vitality; it is void; it is beneath us to found our jurisdiction upon it, and we will not rest on so frail a superstructure as this—we will not base action which cannot but result unfavorably upon proceedings thus instituted and thus characterized.

THE ATTORNEY GENERAL [Mr. MARTINDALE]: Mr. President—

Mr. SHAFER: I have not the pleasure of an acquaintance with the gentleman who has just arisen, nor do I know who he is; and as we have adopted a standing rule that the prosecution shall be represented by counsel who have already appeared, unless the Senate otherwise orders, I must object. I have no objection to anybody appearing, but I want to know whom they represent.

THE ATTORNEY GENERAL: With the intention of submitting to this honorable body an explanation of the circumstance of my appearance here, I began addressing you, with the view of soliciting your attention for a few moments while I should present the views of the Governor, in exculpation of himself alone, as bearing upon the question before you. Until this body shall have disposed of that question I shall take my seat.

Mr. SHAFER: If the gentleman appears here in exculpation of the Governor, although it is a violation of the rules adopted by the Senate, I cannot object. But I supposed when I raised the objection that it was intended by the gentleman (who I understand is a no less person than the distinguished Attorney General of the State) to appear as an additional counsel in this case, and I intended to object to him or anybody else appearing in addition to those who have appeared, unless by the leave of the Senate, as provided by the rules; but if the distinguished gentleman appears for the Governor, I will withdraw my objection; but I must object to his entering into a discussion at large of the question which I have been discussing.

THE ATTORNEY GENERAL: I do not wish the learned counsel for the respondent to labor under a misapprehension. I desire to say that I deem it appropriate to enlarge upon the argument so as

to embrace considerations which he has presented to the Senate, as bearing upon the point now before this body.

MR. SHAFER: Then I was entirely right that the learned counsel does not appear for the Governor alone, but he does appear in the capacity of assistant or leading counsel for the prosecution. Of course I felt a little anxious to know whom he appeared for, if we are to have so distinguished a rival. Without intending disrespect to anybody, and certainly we could not be disrespectful to so distinguished a person as the Attorney General, we insist that the rule of the Senate shall be enforced. If the Senate shall see fit to relax the rule, and we have the pleasure of meeting the distinguished counsel in the case, it will not be in the least distasteful, although we may feel ourselves overshadowed and overcome by the presence of the Attorney General.

THE PRESIDENT: It is true that rule second, adopted in this case, reads as follows: "The counsel for the prosecution shall also have a place assigned to them within the bar; and the prosecution (unless otherwise ordered by the Senate) shall be represented by the counsel who have already appeared in the matter." The Chair understands that to be to give permission to the counsel who have appeared in this matter, upon the part of the prosecution, to take their places within the bar of the Senate, for the purpose of appearing as such counsel. The Chair, however, understands this case to be one in which the people of the whole State are interested. It is an allegation upon the part of the Governor under the Constitution, which is submitted to the Senate for their decision, for whom the Attorney General, who is the law officer of the State, has the right and privilege, in the opinion of the Chair, to appear as counsel in this case. The Chair, of course, is under the direction of the Senate with regard to the matter, if they see fit to order otherwise.

MR. SHAFER: I am not questioning the propriety or impropriety of the Attorney General's appearance. I am questioning the power of the Attorney General to appear here, under this rule, until the Senate has changed it. I insist upon the question and the judgment of the Senate whether, under its construction of the rules, other counsel can appear than those who appeared at the beginning of the proceeding without the consent of the Senate. I do not say but what it is entirely proper that he should appear in a prosecution of this character. But what I do say is, that until you have

amended the rule, no person has a right to appear in addition to the counsel who appeared at the beginning of the proceedings.

THE PRESIDENT: The Chair has permitted the counsel to proceed with his remarks, but it is of the opinion that the objections must be raised from the body of the Senate, and not by the counsel.

MR. SHAFER: Then we have no right to object, however it may affect us.

THE PRESIDENT: Certainly, the counsel can object, but the objection must be in form, and from a member of the Senate.

MR. SMITH: We desire to except to the ruling of the chair, on the ground that the ruling must be made by the Senate, and we desire that our exception be entered upon the record.

MR. H. C. MURPHY: I am of the opinion that under the rule adopted neither the Attorney-General, nor any other person, than those who have already appeared, has a right to appear in this case without an order from the Senate. This rule was adopted for the purpose of limiting the number of parties who might appear to prosecute in this proceeding as a necessary regulation and convenience for the Senate. But, sir, to obviate any objection, and to save exception, I move that the Attorney-General be allowed to appear here for the prosecution for the purposes of this motion,

The motion was carried.

THE ATTORNEY GENERAL: It has not been deemed important for any public interest that the Attorney-General as the law officer of the State, should appear in the investigation of the matter which is before the Senate, until in the progress of that investigation a point arose which seemed to involve, in some degree, the regularity and the propriety of the action of the Executive of the State. When apprised, in the course of these proceedings, that a point was to be presented involving that aspect, the Executive deemed it important to communicate with me as the law officer of the State, and to desire my attendance here for the purpose of representing him, and in a certain degree the regularity of the proceedings which have emanated from him, to form a basis for the action and deliberation of this body, and to that extent is it that I desire to address a few remarks to the Senate. I am not apprised of the objections made here in specific form, except as they have been recited by the learned counsel for the defense in the argument just addressed to the Senate. But I understand that a plea has been interposed here in the

nature of a plea to the jurisdiction of this tribunal, by reason of the want of an authentic document communicated to the body in which the proceeding which has been instituted can be further investigated; and I hear it said that what purports to be the communication of the Governor, which has induced action upon the part of the Senate and their convocation here for the purposes of this trial, is a fraud; has been unlawfully produced here; has been palmed off upon this body. Certainly these are very grave accusations against officers who occupy the highest positions of any public officers within this State; implying, nay, very emphatically expressing a grave injury done by the very highest tribunal which can be convoked for the purpose of judicial investigation within the State; accusations which ought not to be lightly made nor seriously entertained, except sustained by the most satisfactory proof. Well then, Mr. President, from the facts which have been produced here, I am prepared to deny the accusation—to deny that anything has been done unlawfully or wrongfully; that anything has been abstracted or palmed off upon this body as the document to induce the action in which you are now engaged. There has been a mode of presenting the paper entered upon the journals of this Senate not exactly according to the rules and regulations which are prescribed for the action of the Senate. But beyond an imputation of irregularity, there can be nothing which can possibly sustain the argument or furnish a plausibility for the argument which has been produced here. Now, what has been done? What is there which has been the subject of investigation here? Has there been an imposition on the Senate? Has anybody attempted to present here for your consideration a document which it was improper to present? Has anybody assumed to appear for that officer to whom, by the provisions of the Constitution, it is confided to make to you this recommendation? Whose name has been forged? What act has been done which it is not legal and right and proper should be done? What is there on the journals of this Senate not right to be there, and not there with the acquiescence and concurrence of that public officer to whom is confided the right to present a document to be entered at all? Who made an alteration in the original draft, and presented that recommendation to the Senate? Why, it was the Governor of the State. Who, then, is the forger guilty of the wrong? Why, it is the very man; the public officer to whom is confided the right to prepare the

document, and on whom is devolved the duty of its presentation. Again, Mr. President, suppose there was an irregularity in the mode of presenting it. Is it an irregularity involving anything which is substantial? Has there been anything presented here which could not have been presented in the event that the first document had remained in the very form and unchanged as it first proceeded from the Executive Chamber? By what provision of the Constitution, or of the law, is the Executive of the State confined in the number of the recommendations which he may make to the Senate? He has made one recommendation; suppose he were to make two or three, or a dozen recommendations, and all in substance alike, would it involve any change? Do the analogies with which my friend is familiar, in the discharge of his official duty, sustain any different view? He as public prosecutor, may present to-day an indictment for an offense, which has been properly found. To-morrow he may think it proper to present another indictment with the very same charge, and another, and another. Is there any authority or prohibition of law against it? Over and over again this may be multiplied, embodying the same charge. They must undoubtedly be presented by that authority which is invested with the prerogative of making the charge, and they may be multiplied *ad infinitum*, and when at length the last charge is formed in such manner as to meet the requirements or tastes of the officer, and is presented before the proper body for trial, it is there with entire regularity; there it is in form to invest the court with jurisdiction to proceed with the trial. But, Mr. President, it does appear to me, and I present this question to you with the assurance, and yet with some degree of deference, that the whole proceeding here is one now somewhat extraordinary in its character. I listened with much attention to the ingenious comments made by the counsel, as sustained by the authorities he has read here; but I cannot see the application of those authorities. It appears to me that all there is to inform this Senate of the nature of the communication on which they are acting, is recorded in the journals of the Senate; and whether the record be made either once or twice or thrice, any one of these communications appearing there in due form, the record there is the foundation of your jurisdiction, your authority and warrant to proceed. Now, I can imagine that the Senate might be disposed to entertain the question when it is alleged that some man, actuated by improper motives, guilty of some gross wrong, has unlawfully taken a public docu-

ment prepared by the Executive officer of the State, changed or altered or forged that document, and substituted it upon the journal. I can imagine that that might make you pause, and that you might be inclined to look around, to see whether there was some mode of remedying this substantial wrong. But in a case where at most the matter is a question of regularity as to the mode in which a paper came before the Senate, no such inquiry is needful to be made. In such a case as I have already stated, the forgery is dispelled, all improper motive repudiated, and the unlawful act is disproved by the production of the evidence, that the very officer, the Executive of the State, to whom is confided the duty of presenting this recommendation, is the one who had sent it here, and sent it for the purpose of being entered on the journal. The learned counsel put the question to the Governor, to know whether he had knowledge of the manner of its transmission, except as it was presented by the Lieutenant Governor upon the occasion of this interview, testified to by him as occurring in the Executive Chamber. But is it not plain and obvious that it was the intention of the officers, when that change was made and this paper was confided to the Lieutenant Governor by the Governor, that it was to take its place in the Senate? Is there any argument required, to prove that it was designed by these gentlemen that that paper should come before this body and be entered on the journal? Then what is the substantial effect? If a public officer intrusted with the duty of making this recommendation, has reviewed the original document before it has been entered on the journal, and confided it to the proper officer of the Senate, with the intention that it should be entered on the journal in the very form in which it appears here, and it is prepared and rectified, and with this purpose and with this understanding that it should be thus disposed of, and it is entered upon that journal, is read, and is approved, it is thus made the authentic instrument conferring jurisdiction upon this body. Now the only record before this body to inform them of the action of the Governor, or authentic and obligatory upon you and me, and all of us, is this record which you have made. I will call the attention of the Senate to the case of the People of the State of New York against Daniel Devlin, chamberlain of the city of New York, decided in the Court of Appeals in the last September term.

MR. SMITH: That was a case of a statute.

THE ATTORNEY GENERAL: Yes, sir; it was a statute. Mr. Devlin was chamberlain of the city of New York, and he claimed to retain one per cent on money he received in his official capacity, which by the statute referred to in the case he was deprived of, the statute fixing his compensation at $2,000. The suit involved some $20,000, which he claimed he was entitled to retain by law. He relied for evidence to show that he was entitled to retain, upon an allegation that the law as recorded by the Secretary of State and certified to by that officer was not the law which had been passed by this body and the other body; that is, he aimed to go behind the record in the office of the Secretary of State, and to show what had been the action of these branches of the Legislature for the purpose of overcoming the effect of the statute as it was recorded in the proper office of the State. It was decided in the case after all the evidence was produced that the bill as recorded in the office of the Secretary of State was really in conformity with the requirements of the law, and as passed by the two bodies, yet the other point was a subject of discussion, in regard to which it was held that the parties could not for the purpose of impeaching the statute go behind the records to inquire into the regularity of the proceedings of the Legislature in passing such an act. Amongst the matters to which I briefly advert as bearing on the proposition contained in the opinion of the court, I read an extract from Comyn's Digest, which is contained in the decision. Citing Lord Coke's authority he says:

"And, therefore, a man cannot plead to it '*nul tiel record.*' So it shall not be proved by a journal. And if the journal of Parliament be variant from the record, it does no prejudice, for that is no record. So, if by the roll it appears that the bill was sent to the lords by the commons with a proviso annexed, and no proviso is extant upon the record, yet it shall be a good statute."

MR. H. C. MURPHY: What court is that in ?

THE ATTORNEY GENERAL: In the Court of Appeals.

Again citing the language of Governor Bradish in 23 *Wendell :*

"But if all courts and officers called on to decide upon the validity, or give effect to any act of the Legislature, are not only at liberty, but are even required to disregard that certificate (certificate of Secretary of State), and to go behind it and inquire in what manner, and by what vote the act was passed by the Legislature—indeed in what manner it passed through all its various stages, until, *as a law*, it was deposited in the office of the Secre-

tary of State, and thus become a public record, the evils which would necessarily result from such an interpretation can hardly be imagined."

I do not propose to prolong the recitals from the case, but barely to present the fact, as I have already done, that in this case the journal of the Senate is made the record for the purposes of this trial of what has been communicated to this body; and the office of the Secretary of State is made the place for the deposit of the laws after they have been passed through the proper stages. In regard to this case, the record is made, and the end of the message is accomplished when it arrives in the Senate, and is entered upon its journals. Authoritative upon all, and especially authoritative upon matters which are mere matters of regularity involving nothing which is substantial; done by parties who are entirely competent to have substituted another document just like this document, although the first one had been spread upon the journals of the Senate; in this view, deeming the action of the Executive of the State without reproach, as well as the officer who had called attention to the phraseology in which the communication was made, and regarding the alteration as a thing entirely immaterial, not bearing in any degree on the inquiry which is before this body, I have come here to address this argument before you. Now it is quite apparent that whatever has been changed here has been done out of a kind consideration for the accused—neither more nor less than a kind consideration for the accused—because what is embodied in the language commented on is purely language declaratory of the constitutional rights of the accused. The Governor says that he makes a recommendation to the Senate of a removal, but he accompanies it with the qualification which is as though he had said, "subject, nevertheless, to the judgment of the Senate, whether, after opportunity for defense as provided by the Constitution, upon a fair and full investigation he shall be convicted of the charges made against him." That is all. In either form—that form or the original form—the Governor has simply added to his recommendation a reservation of the constitutional rights of the accused to be heard before the Senate, to take their judgment after the opportunity for a fair trial. It adds nothing, it detracts nothing from the force or the effect of his recommendation. It is without any legal effect whatever upon the proceedings before the Senate; but it is a kind, considerate qualification of the Executive recommendation, equivalent to saying, "it has been made

without hearing the defense, it can only be investigated by the Senate in the mode prescribed by the Constitution." Thus, viewing this matter without objection in substance, without objection in point of form, I submit in behalf of the chief officer of the State these considerations to the Senate.

Mr. SEDGWICK: Believing when this question arose upon the putting in of this plea or paper, in a nature of the plea to the jurisdiction that it in no manner affected the merits of this trial, I may possibly have erred in not going as fully as was desirable into the authorities and the reasoning which might be offered upon the subject. Believing that this question has been raised for delay; that it does not in any method or to any extent affect the merits of this trial; that the alteration which it was proposed to prove was in no material part of the paper upon which the foundation of your jurisdiction rests; that it deprived the accused of no defense, and did not in any way tend to his prejudice or disadvantage, I made as brief a statement of the ground of my opposition as I supposed the nature of the case required. I shall only pursue this argument because the case has assumed a new aspect, and because, without protecting any right of the defendant, his counsel have seen fit to assail the integrity of the public officers of the State, and to put this question in issue which involves their integrity and good conduct. For that reason, and that alone, I shall pursue it a little more minutely than I did before. The paper presented by the counsel this morning is this: They propose to prove, and they allege and "aver that no such paper writing as that purporting to be a message from the Governor to the Senate, and printed and set forth in Senate Document No. 48, has ever been communicated to the Senate by the Governor, and such paper writing purporting to be a message as aforesaid, is not a genuine message from the Governor, as this said respondent now here offers to prove; and the said respondent now here avers and offers to prove that the message, which was in truth and in fact communicated or transmitted by the Governor to the Senate, relating to the charges against him, was on the day it was communicated to the Senate wrongfully and unlawfully abstracted from these files and destroyed or altered, and the said pretended message upon which the jurisdiction of the Senate is now claimed was wrongfully and unlawfully substituted in the place of the other, and which such substituted paper writing, in so far as it recommends the

removal of this respondent, and in other respects, materially differs from that communicated by the Governor to the Senate." I objected to that proof because it undertook to impeach the record of the Senate; because the journal was the best evidence in the case; because that could not be reached and affected by parol evidence outside of it. That question having been so far disposed of that proof has been admitted upon the subject, I now propose to submit a few remarks upon the proof which has been presented, to show that no legal proof has been offered to sustain any part or portion of the plea. Now, what is the proof? How stands it upon this case? In the first place we show the record of the Senate, by which it appears the paper as it now stands was, on the 14th of February, entered upon the journals of the Senate, and that it was the next morning read and approved by the Senate, and became, therefore, a part of their journal. That journal is an authentic document. The Constitution of the State (article III. section 11) requires that "each house shall keep a journal of its proceedings, and publish the same, except such parts as may require secresy." Each house shall keep a journal of its proceedings. That is the provision of the Constitution itself. That journal is competent evidence. It was so held in the case which the counsel cites, *Root* vs. *King*, in 7 *Cowen*, decided in the Supreme Court. That was a question as to the competency of a journal as evidence; and upon that subject the judge, in delivering the opinion of the court, says:

"As to the receiving of improper testimony, I think there was none. The journals were shown to have been printed by the printer to the State, and to have been laid upon the tables of members, where any error would probably have been corrected. They were proved by the Clerk. This was certainly *prima facie* enough. A printed copy of public documents, transmitted to Congress by the President of the United States and printed by the printer to Congress, has been holden to be admissible evidence."

So that, by the decision of our courts in the first place, the journal is competent evidence, and I shall now show by the decision of the highest legal tribunal in the State—the Court of Appeals—that that evidence is the best evidence in the case, and that it cannot be controlled or impeached by parol evidence. I refer to the case of *The People* upon the relation of *Zeyst*, 23 N. Y. Reports, page 140. The head note says:

"The town clerk's minutes of the proceedings of a town meeting are conclusive. Parol evidence can not be received to show that the next annual meeting was in fact appointed to be held, by the majority of voters, at a different place than that stated in the minutes. Though in actions to try the title to an office, parol evidence is, in general, admissible to impeach the certificate of the party holding it, an obstacle arising from averments contained in a public record can, it seems, only be removed by a direct proceeding to correct the record."

By the statutes of the State, the town meetings are required, by their clerk, to keep a record of the proceedings of the town meetings. The clerk of the town makes his record, and that record can not be impeached by parol evidence. In this case pending here the record is required to be made by the Constitution of the State. It has been made. It was read and approved; it became complete. It is the evidence that controlled this body in regard to proceedings had here. And that record shows that the very paper now objected to as the foundation of your jurisdiction was presented to the Senate on the 14th of February, entered upon its journal, and read and approved on the next morning. Now that we prove incontrovertibly. Oral evidence is not admissible to overthrow it. It is *the* evidence in the case that must prevail. The action to which I have referred, was in the nature of a *quo warranto*, to determine the right of a supervisor to his office. I read from the case:

"Upon the trial, the plaintiff proved, by the minutes of the annual town meeting, held in the town of Bleecker in 1859, that the house of S. S. Easton, in said town, was appointed as the place of holding the annual meeting for the ensuing year. A town meeting was held at that house on the 14th day of February, 1860, pursuant to such appointment, and the plaintiff, Burr, was then and there elected to the office of supervisor. If that election was valid, he was unquestionably entitled to the office; but it was claimed by the defendant that the minutes, so far as relates to the place fixed for holding the election, were false, and that the place actually appointed was the house of Michael Heinz, Jr., at which he was chosen to the same office. The defendant offered oral testimony to prove these facts, which was rejected, and the defendant took exception. The plaintiff had a verdict, subject to the opinion of the court, which, at general term, in the fourth district,

rendered judgment in their favor, and the defendant appealed to this court."

LOTT, J. in delivering the opinion in the case, says :

"It is shown in the case before us, that minutes of the acts and proceedings of the annual town meeting held in the town of Bleecker in 1859, were kept and authenticated in conformity with the provisions of the law to which I have referred. They were, therefore, the best evidence of what was done at that meeting ; and if they are to control the rights of the parties, there is no doubt that the relator, Burr, was duly elected in 1860; the question then recurs, whether these minutes are conclusive on the subject. It is a well settled rule that, where the law requires the evidence of a transaction to be in writing, oral evidence cannot be substituted for that, so long as the writing exists and can be produced ; and this rule applies as well to the transactions of public bodies and officers as to those of individuals."

So that the rule applies to the transactions of public bodies and where a record of their proceedings is required to be kept by law, and of course much more where it is required by the Constitution to be kept; and it is the best evidence of the transactions that are recorded, the best evidence of everything that is proper to go upon the record, and it cannot be contradicted by parol evidence. In this case the statute makes it the duty of the town clerk to keep faithful minutes of the proceedings of the town. Now, then, the parol evidence given here is not in conflict with the record at all, and does not sustain in any degree the allegations of this plea. There is no statute, so far as I am advised, requiring a message to a legislative body to be read. It comes into the possession of the Senate by a messenger from the Governor, who may send it by any messenger whom he chooses. This message was sent to the Senate; it remained in the possession of the chief officer of the Senate; it never went out of the possession of the Senate. It was, as the Lieutenant Governor said in his testimony, "informally" in the Executive Chamber, but was still in the possession of the chief officer of the Senate. Now did the Governor authorize this message which was put upon the records of the Senate? Has any imposition or fraud been committed upon this defendant by a message which the Governor did not sanction, and which he did not approve having been substituted for one that he did approve? Not at all. The Governor's attention is called to what I shall show is an immaterial expression in his message that it might be

better in another way. The message, still in the possession of the Senate in law and in fact, and the Governor assenting to it himself an amanuensis directed by him, copies what he writes in pencil, and changes the message in an immaterial part. Is there any fraud about it? Is there any injury? Is there any imposition by the the Governor, who had a right to change and alter it? Has it even been without precedent, and a thing unheard of in the proceedings between a Senate and the Governor; or is there anything in it by which any human being can be prejudiced, or by which the rights of anybody are to be affected, by which any substantial interest of any person is to be changed or affected in the remotest degree whatever? Nobody pretends it. Is the allegation of the plea sustained? Did the Governor change this message in a material part in relation to the removal of this officer? It stands precisely in the language and to the very letter in which it was originally communicated. That portion of it has not been changed at all, and that is all the material part of that message; the rest is mere surplusage. The rest may as well have been erased and torn off as to have gone in in any form whatever. The Constitution requires that he shall recommend the removal of the officer, and that the Senate shall act. That stood in the message from beginning to end precisely in the language and to the very letter in which we find it in the message now recorded upon the journals of the Senate. Now that recommendation has not been changed. Has it been wrongfully and unlawfully abstracted from the files of the Senate and destroyed or altered? Is that part of the allegation true? Has it been taken away without authority? Has it been taken from the files of the Senate and a forgery committed? Because if this proceeding is dismissed upon this plea and at this point, you publish to the State and to the world that the records of the Senate have been falsified; that its chief officers have been guilty of forgery; that they have attempted by trick and by fraud to deprive a citizen of his defense to the charge made against him; that this proceeding has been a wicked and unjust attempt to bring a person under the sentence of the law who has been deprived of his defense by reason of a fraud committed by the Senate, by its officers, by the Governor — a forgery committed by him of a document of which he was the author and of which he had control, and which he had the right to supersede by another; and this spectacle is presented to the State of a prosecution of this kind failing upon such an allegation as this, and upon

such proof as is presented to support it. I say it is absurd. It would be a most ridiculous termination of these solemn proceedings. It would be worse than a farce; it would be a cruel tragedy, in which the character and standing of the chief officers of the State and of the Senate, and the veracity of its journals, were all impeached and held up to the world to be a tissue of fraud and forgery. I dont believe that such a result is possible. Now, the counsel illustrates this by saying that he might apply to the District Attorney of the county and say, "your indictment is wrong, it should be changed in this respect or in that and it would be better and more in conformity with the law." The counsel forgets the great distinction between the two cases, that there he tampers with the finding of a jury and undertakes to alter what they report to the court as a true bill; whereas, in this case, the Governor who makes the message, who sends the message, and who signs the message, and who is its author, with the sanction and concurrence, and upon the suggestion of the chief officer of the body to whom it is addressed, alters it in an immaterial part. The distinction is obvious; it is plain to every man's sense and reason that the two cases are entirely dissimilar in every respect. And all the authorities the counsel has paraded on the subject of forgery go upon this ground, that the alteration of the document or paper, in order to constitute the crime of forgery, must be in a material part. It must be a material alteration in a material part. That is the authority which he read from *Greenleaf*. Now is this material.? I dont speak of the illiberality of coming in here, because I suppose in a case of this sort that any kind of defense except a defense upon the merits is the best thing the counsel can advise. I don't complain then, of the illiberality, or pretend to take advantage of the fact (as the counsel preceding me has suggested) because from pure kindness towards the accused, that he might not send him before this tribunal with any apparent prejudgment ment of the Governor against him, this alteration was made in an immaterial part of the message in order to give him all the advantage arising of a presumption of innocence. But I do say that that is in all its parts, entirely immaterial. You might erase the whole of it, and it would not affect the validity of this message. So long as the recommendation of his removal stands, that message is perfect. That is all that the Senate requires to acquire jurisdiction, and all the residue of it is entirely surplusage.

And here it has been adjudged by the Senate, when this question was directly presented to them for their consideration, that so far as this message undertakes to speak beyond its recommendation for removal, so far it is immaterial and surplusage. That is the material part of it; while that stands unaltered, there has been no forgery in any sense. It strikes me that this proceeding ought to go on; that those men who are determined that the judicial conduct of this judge shall be investigated by the proper tribunal, may have that investigation *now*; that they be not driven to the presentation of other charges, and the calling of this body again together for the purpose of this trial. He comes here with three months' notice of the charges that are made against him. He comes here having, since the meeting of your committee on the first day of March last, been fully apprised of the accusations that are made against him. And those men who believe that justice has been outraged and the administration of law been brought into contempt in the county of Oneida, by the conduct of this judge, will see to it, that these allegations made against him, are tried upon their merits; and all these dilatory motions, all these quibbles about the jurisdiction of the Senate or the forms of papers that are presented to them will, in the end, be fruitless to prevent a fair trial of this man, upon the real and substantial charges brought against him, which we are ready to substantiate.

MR. H. C. MURPHY: Before we proceed further in this argument, I would like to have read from the journal the action of the Senate on the communication from the Governor.

The clerk proceeded to read from the journal of February 14th, 1866, the following: "A message was received from "his Excellency, the Governor, in the words following:" "[Here follows the message.] "Mr. Folger moved that the "communication and papers be referred to the Committee on "the Judiciary."

MR. H. C. MURPHY: Before the counsel for the respondent proceed, I should like them, if they are prepared, to present us some authority upon this point. I understood them to say distinctly that a public writing altered or changed, in a material or immaterial respect, becomes thereby void. I understood them to lay down that proposition absolutely, that parties guilty of altering or changing a public document, are guilty of forgery. That is one question. But the point I would like to have authority upon is, that such a document, so manipulated, thereby becomes void.

MR. SHAFER: We demonstrate that, I think, with certainty in this wise: I say that the alteration of an instrument in the least particular renders the whole instrument void, and it is a forgery. I cite from *Greenleaf:*

"But in the proof of the charge, it is not necessary to show that the entire instrument is fictitious. The allegation may be proved by evidence of a fraudulent insertion, alteration, or erasure, in any part of the true writing, whereby another may be defrauded."

If in any part of the true writing there is a fraudulent insertion or alteration, it is a forgery. It is a forgery of a private writing, and it is fraudulent from commencement to end. I beg the Senate to bear in mind that I lay down this rule in reference to a private writing, and not in reference to public documents and records. The distinction is well settled (as I have shown by *Hawkins'* and by *Bacon's Abridgment*,) between the necessity of proving a fraudulent intent—an intent to injure in the case of private writings and in the case of public documents, or public records. This authority proves that a change, or alteration, or erasure, of a private writing, in the least particular, renders it wholly void. That is what voids an instrument so far as a private writing is concerned. Now we are to inquire, what is the forgery of a public document? If it is once established that a public document is forged, then it is void. It is so with a private writing.

Hawkins says:

"And first, it is clear that one may be guilty thereof [forgery] by the common law by counterfeiting a matter of record; for since the law gives the highest credit to all records, it cannot but be of the utmost ill consequence to the public to have them either forged or falsified."

MR. FOLGER: Suppose I have a deed, on which my title to land depends, and some one goes and alters the boundaries of it, am I not at liberty to show what the true description was?

MR. SHAFER: Undoubtedly. That is the act of a third person. In answer to that I will say, if the *grantor* alters it and changes it with the intent to affect the grantee, then he is guilty of forgery, or, if the grantee, a party to the deed, alters it with the intent to enlarge the grant, he is guilty of forgery.

MR. FOLGER: If the grantee or grantor altered, and are guilty of forgery, are they still shut out from showing the true state of the case—their title under it?

MR. SHAFER: If the grantor or grantee?

MR. FOLGER: Either of them.

MR. SHAFER: I suppose the writing itself would be conclusive, but I don't see the exact point of the inquiry. I suppose the grantor or grantee in a case of fraud or mistake, may show the mistake. But that is not the question of the Senator from the Third [Mr. MURPHY]. The question to which he directed the attention of the counsel, for the respondent, was this: whether, if a public document was forged, thereby it became void. I say it follows, as an inevitable conclusion, that, when it is once shown what constitutes a forgery of a public document, it is thereby proven to be void. I agree, if an interloper comes here and goes to the journals and alters these journals, and all agree that it is a spoliation, that does not affect your journal. But the point I make is, that when the author of an indictment changes an indictment, so that it is different from the one sent to the Senate, it is a forgery or alteration, such as renders the original instrument void. That is the distinction I make, and it is a distinction borne out by the authorities.

MR. H. C. MURPHY: It strikes me that that is a matter of evidence; and the question is, whether a document, so altered, can be read in evidence—whether it can be shown what it was originally or what it may be now—whether a document—a public document—once altered or changed in any respect is or is not void, so that it can or cannot be read in evidence.

MR. SHAFER: Undoubtedly it is a matter of evidence if the allegation is that it has been so changed as to render it void—if that is the allegation, you can show by direct proof the alteration and the change. Now, as in this case, you take a public document which is alleged on one side is the message of the Governor, and, apparently, on the journal it is a message of the Governor, and we say it is not a genuine message of the Governor which fact we show and thereby contend that it has been destroyed.

MR. CROWLEY: If I understand the position taken by the counsel for the accused, it is that the Senate has not now before it any document or any recommendation of the Governor upon which it can proceed. The point I would like to call the attention of the counsel to is this: The message was sent in to the Senate by the private secretary of his Excellency the Governor, and was received and read, and after being read was, by the Lieutenant Governor or somebody else, after it became the property of the Senate, taken to the Executive Chamber and changed. Now the question is,

whether or not the counsel for the accused have not, by the parol evidence which they have given of the contents of that paper, put us in possession of the very document that was read and received by the Senate.

MR. SHAFER: When the proposition is to try us on the original message as it came here, then it is proper for us to answer the point made by the Senator. But the trouble is we are not upon trial upon the original message as sent here. When the Senate see fit to arraign us and to say we are on trial on the message originally sent by the Governor, before it was changed, then we are prepared to answer that question. But we say that the message now here was never sent, and that the message originally sent has no existence, because it was altered and changed and destroyed in legal contemplation and effect. [The Attorney General here propounded a question to Mr. Shafer which was inaudible to the stenographer.] I will, out of respect for the Attorney General, answer that question, though we would prefer, as far as the counsel are concerned, that we be allowed to answer in the ordinary mode when an argument is concluded. In answer to the Attorney General, I would say we have not yet arrived at the stage of trial upon the merits. Our motion goes upon the jurisdiction to try at all. We are not on the trial of the charges. We assail the jurisdiction of the Senate to try at all, by reason of what we have stated.

MR. SMITH: Before submitting what little I have to say in reference to the particular question involved here, I wish to make an allusion to the argument so often reiterated by the counsel for the prosecution, that we are guilty on our part of illiberality in coming here and insisting upon a trial according to the forms of law, and that this body, and those members of the committee together with the Governor, who have been concerned in instituting this prosecution have been prompted by feelings of pure kindness. I want to repel that idea. I say without fear of successful contradiction, that in the history of this State no man—not the humblest who has ever lived in the State—has ever been put on his trial under circumstances such as attend this case. I assert that so far from there being anything liberal, the record shows a disposition to condemn this man, not only without proof, but without even looking at the papers. I answer the learned counsel by saying that the meanest man who ever lived in the State has never suffered an attempt to try him for the pettiest crime with which a man can be charged,

as this man now before the Senate. The Governor of the State says that he never looked at the case—that he never even made a preliminary examination of the charges against him, and it is proven now that he told the Senate to go on and try him and convict him if he could not prove his innocence. There is nothing like this in the history of this country, or any other. When the gentleman talks to us about kindness, I say that it is the initiation of a persecution, which, if it could be carried on, would be unparalleled. It would demand of a man that he shall prove his innocence when charged by whom, we do not know, when the Governor tells you that he has not even made a preliminary examination of the case. Thus much for this allusion to the kindness. Perhaps it is better to call things by their right names, and to speak of them as they present themselves to our minds, and I shall undertake to do it. I say that we stand here, as we have a right to, demanding a legal trial, and it is not to be imputed to us that we are endeavoring to postpone punishment and to delay the administration of justice because we ask to be tried according to the forms of law. That is what we ask, and because we ask that we are said to be illiberal; and because we insist upon it, we are said to have been guilty of great impropriety, in making grave charges against high public officers. We have made no charge. What I am attempting to show vindicates our position and shows that this tribunal has no jurisdiction. What is the question? We come before this Senate and say that your record has been forged. We say that the paper on which you found your jurisdiction never was communicated to the Senate. If that is true, it is an end of this case, is it not? You cannot try this man upon a paper never communicated to the Senate. If there had been some other paper before that that was good, it does not help the case any. When we come to that paper, we will examine into and try the sufficiency of it. Is this illiberal for us to say? Does the learned counsel, supported by the Attorney General (who comes to vindicate one of the witnesses for the prosecution, the Governor of the State), mean to say that you have any message here at all? Is it not true that you have none? That is the question. I say, in reference to the first message, that when it is made the foundation of a proceeding, and the Senate rests its jurisdiction on that, we will then try the sufficiency of that message. The question is, whether the message which is printed in the Senate journal is the message that was sent

to the Senate? It does not make any difference what the motives are, or how great the man is, or how high an office he holds;—the liberty of the humblest individual is as sacred and valuable to him as that of the highest man in the country. We say that the Lieutenant-Governor of the State took from the files of the Senate a paper and carried it to the Governor, where it was altered; and it turns out that he brought it back from the Executive Chamber and placed it upon the files of the Senate, without indicating to the Senate or giving the Senate notice that it was a different paper which he had thus returned; and it is upon that paper which you seek to try us. All the counsel on earth, and all the ability that can be brought to bear, and all the allusions that can be made to men in high places, cannot change that fact. That paper which was placed upon the files here was never communicated to the Senate. The Governor swears that he gave the paper to the Lieut. Governor, without instructions, and the Lieut. Governor swears that he placed it upon the files of the Senate, without notifying the Senate of it, or indicating the fact in any way. What have you got? You have a paper sent from the Governor of the State and brought into the Senate Chamber without having been communicated to the Senate. Forgery or no forgery, alteration or no alteration, material or immaterial, the paper on which you seek to found your jurisdiction to try this man has never been presented to the Senate at all, as the proof shows. But the learned counsel says the record proves otherwise, and that the record is the highest evidence, and you cannot impeach it by parol. The record *is* the highest evidence. You cannot impeach a thing that is proved by a genuine record by parol. But cannot you prove that a record has been forged? Has the learned counsel produced any authority here to establish such a doctrine as that, that you cannot prove that a record has been forged? Suppose the town clerk in the case which he has referred to had certified that a town meeting was held at the house of John Doe, and somebody had erased the name of John Doe and put in its place the name of Richard Roe, could you not prove that that record had been forged—that the record had been changed? Will anybody pretend that that record was good for the purpose of establishing the fact as to where the meeting was held, and that the record could not be impeached? No. The doctrine is familiar everywhere. There is no court where it would be questioned that you may prove the record false and forged. Suppose a record had been changed,

could you not prove it? Suppose a judgment had been entered different from that directed by the court, or had been altered by a party so as to increase or diminish the amount of it, could you not prove that alteration so as to defeat the operation of the judgments? The counsel entirely begs the question, when he talks about a record being evidence. What is the evidence? The record is the message, and *it* is the evidence. It is a record of the communication of the Governor to the Senate, and the record you have here purporting to be a message is shown not to have been a message from the Governor to the Senate. The learned and eloquent Attorney General, for whose attainments and distinction as a forensic advocate I entertain the highest respect and admiration, has put forth a new proposition, and that is that this message has been communicated to the Senate. He says it was made by the same authority that was competent to make the first message; that it was lodged in the same pigeon-hole which the first message was lodged in before; that it is printed in the same journal that the other message would have been, and therefore it was communicated to the Senate; that it was the same power acting, and therefore what difference does it make whether the power acted at one hour or the next? How would it do if a judge of the Supreme Court was called upon to give a judgment in a case, and after giving it, and after it was entered in the clerk's office, he should change his mind, go to the clerk's office and alter the judgment? It would be the same judge, the same court and the same clerk's office. All the remarkable coincidences would exist which exist in the case stated by the Attorney General. Would he thus alter the judgment by doing this? Not at all. Any act of that kind even though committed by a man as high in position as a justice of the Supreme Court, would be as much a crime and as much a wrong as though he were the lowest underling in the clerk's office; and it deserves the same condemnation and the same punishment, or a little more; for I think the more a man knows and the higher place he occupies, the more liberty can be taken in criticising his conduct, and the more severity can be indulged in in reference to the motive with which he acts, because the more a man knows of right if he does wrong, the greater the aggravation. Is not that so? Haven't they got a paper here that was made by Governor Fenton and signed by him and delivered to the Lieutenant-Governor without any instructions at all? The Governor swears he did not say anything as to what the Lieutenant-

Governor should do with it, and the Lieutenant-Governor put it in the place where the original message was, and it has been put on the journal. Is there no change in that? It seems to me it does not require much study of authority or precedents to determine that. The question now is, has this message upon which the jurisdiction of the Senate is founded, any existence in fact as a message before the Senate? It was further stated by the counsel who told you that he had just woke up in this case, that we are only putting off the day of conviction, that it is only a postponement of the time. He says there is no law in reference to a communication from the Governor to the Legislature. The Constitution itself regulates the manner in which he shall communicate—not through the Lieutenant-Governor. There is no provision in the Constitution that the President of the Senate shall confer with the Governor and procure from him a paper and bring it here and put it behind the desk. The Constitution says that the recommendations of the Governor to the bodies of the Legislature, shall be by message. What does that mean? Is it a message to deliver a document to the Lieutenant-Governor or President of the Senate in his chamber, without any direction about it? Is that a message to the Senate because it is delivered to the Lieutenant-Governor, and he puts it in a pigeon hole in the Senate Chamber, and it is ultimately printed on its journal? What is the real truth of that transaction? The real facts are just as disclosed by the evidence; a message is sent in here by the Governor making a charge against Judge Smith, with a sort of recommendation to remove him from the office of County Judge of Oneida. When it was brought to the attention of the gentlemen of the Senate or the presiding officer of the Senate, of course they were all startled. Here was a paper declaring there had been no examination made in the case at all, not even a preliminary examination, and in which no opinion was expressed at all as to the guilt or innocence of the accused, nor what proof was adduced against him. Here was a State paper sent into the Senate of the State of New York, recommending his removal unless he can establish his innocence. I don't think it required a very astute man to discover that a message of that sort would strike one with astonishment that any one should have the hardihood to call that a recommendation for removal. When it was sent in here, and the Lieutenant-Governor, and I don't know how many others saw it, it at once struck him that this thing would not do, that it was illegal and conferred no juris-

diction; and now in order to avoid its becoming public, better than to say anything about it, he said, "I will just step down to the Governor and without a word being said to the Senators, I will have this alteration made; I will bring it back; it will go on the journal corrected, and stand as a regular charge." Instead of there being this loving kindness, this remarkably extraordinary attachment for Judge Smith, this fondness for him that would not hurt a hair of his head, in a paper recommending that the sharp edge of the sword of justice shall be drawn across his throat unless he can prove that he is free and pure and spotless, it looks to me very much as if it was designed to fix a paper in the place of one that was good for nothing, one that would be good. Then, in the effort to fix it, the question arises whether that can be done and the second paper be legal and binding. It is an important question to Judge Smith; it is an important question to this State; it is an important question to every citizen that it may be known whether a paper thus substituted informally, illegally, without authority, can be made the foundation of any proceeding whatever. A word or two, if the Senate please, upon this question of forgery or the effect of altering this instrument. It is stated in the first place that the forgery of this illegal paper cannot be established because the record is conclusive; and we have had cited here from the unbound leaves of the 40th or some high number of a volume of the New York reports, the case of the *People* v. *Devlin*, who was chamberlain of the city of New York. What was that case? There was an attempt on the part of the Legislature to change a law, so that instead of the chamberlain of the city of New York receiving about twenty-one or twenty-two thousand dollars for signing his name to a check transferring the taxes collected in the county to the comptroller, he should receive but two thousand. The Legislature undertook, and did pass a law to that effect. It passed the Assembly and it passed the Senate and it was signed by the Governor, sent to the Secretary of State and regularly certified by him. After it had been sent to the Governor there was a motion in the Assembly to re-consider that bill, and in some way, (I suppose it was regular, because the learned counsel would hardly admit that anything irregular ever took place about this capitol), it got back to the Assembly and that section was stricken out, and when the Comptroller of this State brought an action against the chamberlain to recover twenty-one thousand dollars that he illegally [illegible]ed as fees, the chamberlain set up the plea that the law had

never been legally passed, and he attempted to prove it by the journal of the Assembly. The Court of Appeals decided that the certificate of the Secretary of State was conclusive evidence that the bill was legally enacted and was the law. The Court of Appeals have simply held what we admitted in the opening of our argument, before the Attorney General came, that a statute was the exception to the rule, and that no proof could be given to do away with the presumption that a statute was legally enacted. I notified the counsel upon the other side, if it was possible, to bring an instance of another exception to show that any other record in this State may not be impeached. The most that has ever been held in any case that has been cited here, is the one that we have and that is in *Cowen's* Reports. The judge in delivering the opinion in the case of *Root* v. *King*, says:

"As to receiving improper testimony, I think there was none. The journals were shown to have been printed by the printer to the State, and to have been laid upon the tables of the members, where any error would probably have been corrected. They were proved by the clerk. This was, certainly, *prima facie* enough."

Take this case against Devlin, the chamberlain. In that case there was a record of the Assembly. There was on the record that they had passed it with this section in, and there was another record they had passed it without the section in. I take it there is no reason to say that this journal is conclusive; but, above all, in this case, the reason why this record should not be conclusive is, that until judge Smith was brought before the Senate yesterday, he never was a party to your proceedings. It would be opposed to the whole course of the administration of justice to say that he is bound by the action of this Senate to which he was not a party, and in which he could not be heard. Next, it is said if there has been an alteration, it was immaterial. "It was a mere matter of taste," says the Attorney General; "it could have been put in or left out." It was another exhibition of that loving-kindness and affection that has been entertained for this judge. Is it an immaterial alteration? Why, it is in the very sentence that contains the recommendation. You take that off and you take off a part of the sentence in which the recommendation is embraced. Can anybody say that it is not a material part of the message? There were but five lines in the manuscript of the whole recommendation. "I therefore recommend that the said George W. Smith be removed from his said office if in the judgment of the

Senate he shall not be able to prove his entire innocence of the charges." It is the one paper all taken together. It is one sentence. Now, I say to take out a part of a sentence containing a recommendation is not fair, because taking away part of the sentence takes away the very idea which prompted it. You take it away, and the whole significance is gone. You take away the very judgment and determination of the officer who made it. "I do hereby recommend that the said George W. Smith be removed." This would be the recommendation of removal. They say the alteration is not material, because he directed the removal upon a condition, and subsequently the condition was changed. Now it is not worth while to discuss whether the alteration is itself material, or whether it affects anybody. It has already been shown that the alteration is in a material part of the paper. It is idle to pretend for a moment that where a recommendation is upon a condition, and all is expressed in one sentence, when you change the condition you do not change the paper in any material respect. It won't do to say it is an act of kindness; it won't do to say that it was to renew an expression of the fervent attachment of these high officers of this State for the county judge of Oneida county.

Mr. C. G. CORNELL: As the hour for adjournment has almost arrived, I move that the Senate continue in session until the counsel has concluded his argument.

The motion was carried.

Mr. SMITH: I am sorry that it is necessary to so protract my remarks as to make the motion necessary. But I have nearly concluded. Why is the record required to be in writing? It is to have verity—that you may know exactly what it is,—that it shall not depend upon the memory or the uncertainty of witnesses. When the paper is produced it is either good or invalid. Now, it is said if this paper is not the message to the Senate, have you not supplied that paper by proving what the original paper was? That is the very reason of the stringent rule, that you cannot establish by parol evidence what the other was. Mr. Demers says it was one thing; Mr. Hastings says it was another. What was the message if you have none here now,—what was the message that was destroyed? Who can tell? Nobody knows for certain probably. The effect of the testimony of these two witnesses is entirely different. Mr. Hastings puts in a clause which is entirely different from the recollection of Mr. Demers as to what was in the message. Now, you have to try this judge upon a message

which was never communicated to the Senate, if he is tried at all, because no one can say what the other message was. I think it is safe to assume that when it is shown that in a material part of the paper there has been an alteration, you will not wait to inquire what the effect of that alteration was, because in dealing with records we want something that is certain. When we prove it is altered in a material respect, and you cannot depend upon that, it is equally impossible to turn to the other, because you cannot find out what the other is. If an alteration has been made in the paper in a material respect, what is the effect of it? It has been said here the effect of it is to make it forgery; if it was improperly done it would make it forgery. It is said, and truly said, if the message was altered in a single word that was material, the whole document is a forgery. And here you will bear in mind, the body of the message was changed by striking out a line. Will you try a man upon a document that is a forgery? Can you try a man upon a false message—a paper that is false and forged? But it is said there was no intent to injure anybody. It is very likely. But that is neither here or there. Right must be done without regard to whosoever is involved in the consequences. If the paper has been changed in a material respect, it was a misdemeanor. It was a technical forgery—that is the word which expresses it. My associate says that it does not follow that it is a crime. I think it does. I consider it a misdemeanor for anybody without authority to take a paper from the Senate, and suffer it to be altered. If that is so, the paper is a forgery from beginning to end. It is enough to prove that it is forged. Would you try a man on a forged paper? Suppose it was not forged; suppose it is a mere alteration. The question has been asked about that. Let me give a case that occurs to me. Suppose I sign a note to a man for a hundred dollars; after that, the note is altered in no other wise than that another man signs his name under mine. That note is void and cannot be collected. It is settled by the Court of Appeals in this State, that it is an alteration of the contract which renders it void. If there is any doubt about this, and the question is not disposed of, I can produce authority in the Supreme Court of this district, the case of Watson against Wells. And there is another case reported in 23 *Barbour*, the title of which I do not now remember.

The ATTORNEY GENERAL: That decision I think has been reversed.

Mr. SMITH: There is a case which holds that you can make the man pay the hundred dollars if he owes it, but you cannot make him pay the note. *Greenleaf* uses this language:

"Though the effect of the alteration of a legal instrument is generally discussed with reference to deeds, yet the principle is applicable to all other instruments. The early decisions were chiefly upon deeds, because almost all written engagements were anciently in that form; but they established the general proposition, that written instruments which are altered, in the legal sense of that term, as hereafter explained, are thereby made void."

If a man should alter a deed so as to make it read something different, it would be a forgery.

Mr. FOLGER: The question is, whether you would be entitled to show what it originally was?

Mr. SMITH: I answer, no. If he fraudulently alters a deed, he cannot show its correction.

Mr. MURPHY: If A gets hold of my deed and alters it without my knowledge, am I to be deprived of my freehold?

Mr. SMITH: No; that is no alteration of the contract. It is the act of a third person who alters the deed. But when a grantor or grantee, a party to the contract, alters it for the purpose of gaining an advantage, the paper to him is void forever. There the rule comes in, that in the case of a private paper the forgery must affect the rights of, and prejudice some individual. But where a public functionary alters in a material particular a public paper, that voids it, whether it affects anybody or not. *Greenleaf* further says:

"The grounds of this doctrine are two-fold. The first is, that of public policy, to prevent fraud, by not permitting a man to take the chance of committing a fraud, without running any risk of losing by the event, when it is detected. The other is, to insure the identity of the instrument, and prevent the substitution of another, without the privity of the party concerned. The instrument derives its legal virtue from its being the sole repository of the agreement of the parties, solemnly adopted as such, and attested by the signature of the party engaging to perform it. Any alteration, therefore, which causes it to speak a language different, in legal effect, from that which it originally spake, is a material alteration."

It is suggested to me, and I supposed I had answered the question, why can you not fall back upon the original message? In

the first place, because the jurisdiction is not predicated upon that; and the second reason, that it has been destroyed, it is true, by the very power that made it; and the third reason, and one better than all, there is not a man living, probably, who knows for certain what the message was. I submit it to the judgment of this Senate that that is the best reason which can be given for not trying him on that message, that it has never been communicated to the Senate. In conclusion, I think it is due that I should say in expressing my judgment in reference to the public officers here, the Governor of the State and the Lieutenant Governor, that it is plain to see how this thing was done. The Lieutenant Governor thought an impropriety had been committed in the manner in which this message was sent. He supposed it was not sufficient, and for the purpose of making it all right,—not dreaming of anything wrong,—he went down there to have it corrected. We don't ask that he be convicted; we don't propose that the State shall be startled by any announcement from here that this body has been brought here at all this expense to decide that these officers have done a great wrong. We simply ask that this Senate shall decide that these gentlemen, in supposing that they could conduct a proceeding in this way, have made a mistake. And I think it would be better eminently for all concerned (for two men so illustrious can afford to suffer by being found guilty of having made a mistake), that they should suffer whatever might be incurred from such a decision, than that a risk should be incurred by this respondent in establishing the precedent, that a paper can be sent to the Senate and placed upon its record as a State paper without being communicated to the Senate. I think it would be better if these two great men (for they are very great men) to bear up, and especially since they are supported by my eloquent friend the Attorney General (who is here, as he says, to exculpate the Governor) against the imputation of having made a mistake. It is only a mistake in beginning a law-suit, and a good many good lawyers have done that. They have undertaken to commence a suit, and in the trial have suffered a non-suit. The Governor instituted a suit here. He or his advisers made a mistake; they undertook to correct the mistake that was made, and they have done it without giving the Senate jurisdiction. Now, that is all. I don't quite acquiesce in the other argument of the counsel, who says that "it don't make any difference; try this case upon its merits; what matters it what the papers are, or what the law is; come to an issue on the merits,

Let that decide it." It would not do them any good if tried in that way, and would not do us any hurt unless there is a legal authority. Nor would the suffering people of Oneida county be benefited. But above all, in reference to the argument of the counsel, that if you sustain this motion you will go home without having had a victim, without having had a conviction, because of having decided that a mistake has been made, and that rather than do that you should close your eyes to these questions and go on and try this man, right or wrong, record or no record, message or no message, because it would startle the people or prejudice some one to have it adjudicated that the court had no jurisdiction for the reason that the message before them had never been regularly communicated to the Senate. I ask that such an argument shall not prevail. It will be a sad time indeed, when such rule is established that is contended for here, and a defendant is to be prejudiced and taunted with being guilty of trying to postpone punishment, when he comes to the court and merely says, "I claim a legal trial according to the forms of law," It will be a sorry day when the court shall say, because we have met at the public expense to try the case, we will try the case without following legal forms. It will be a sorry day when it can be said that any man in this State can be elevated so high, or can have such fame, that before you would convict him of a mistake, you would convict another of a crime. I ask this Senate, when they consider this case against this man, that they bear in mind that they stand here with a judicial arrow pointed at this man's heart, and if they err it will be too late when the injury is done to repair it. We prove before the Senate that the message they have here never was communicated to them; and we say that they have not the power to try us until they have a recommendation from the Governor communicated to them for the removal of this man. If any ever existed, it has been proved by parol, and what it was is in dispute. That the one before you was ever communicated, is not pretended by anybody. Without its being pretended that this ever was communicated, I am at a loss to see how any of the various technical legal questions that have been discussed here are in point. I submit to this Senate, earnestly, that this question shall be fully, carefully and deliberately considered. I know the desire on the part of all to do substantial and entire justice to this defendant; and as one element in the administration of justice he is entitled to is, to insist that he shall be tried according to the law of the

land. And if the case shall be tried you will see how little warrant the learned counsel has in saying this respondent has done anything in his judicial career to justify the criticisms which he has indulged in, to say that the respondent has in the slightest degree brought the judiciary of the State into disrespect.

Mr. FOLGER moved that the Senate adjourn.

Which was carried.

THIRD DAY.

ALBANY, *June* 14, 1866.

The Senate met pursuant to adjournment, the President *pro tem*, Hon. CHARLES J. FOLGER, in the chair.

The roll was called, and a quorum being present, the journal of the previous day was read and approved.

Mr. SMITH, on behalf of the respondent, addressed the Senate as follows:

With the permission of the Senate, Mr. President, I will call attention to an authority which may aid the Senate in arriving at a conclusion. I refer in the first place, to a case in 21 New York Reports, page 539. I refer to this as bearing upon the question of the conclusiveness, as we allege, of public records. I do not believe an authority can be found where it has been ever pretended that they were conclusive. The case to which I refer is *The People on the relation of Stone* vs. *Minck*. There was an alleged alteration of the record, and the case went to the Court of Appeals, on the question whether it was admissible in evidence, whether it was not necessary, before it could be used at all as a record for the party producing it to prove its genuineness. All that was contended for in that case was, that it was admissible as presumptive evidence—*prima facie* evidence, and subject to explanation. I have not paid much attention to the question raised as to the effect of an alteration, because I supposed, as I stated in my argument yesterday, that if the paper, on which it is now claimed to found jurisdiction. is not in fact a message from the Governor, the jurisdiction of the Senate fails, and I do not now clearly see how the question as to the effect of an alteration arises. But if it does arise, no question I think is more plainly settled by an abundance of authorities than that the alteration renders a

paper absolutely void. I cite upon the point the case of *Clark* vs. *Lyman*, 10 *Pickering*, page 45. This was an action which raised this question where a deputy sheriff had made an alteration on the authority of the attorney in a writ of attachment of the date and the return day of the writ. The court held that under the statute of that state, it made the act illegal and the alteration rendered the return entirely void. The court says:

"It is by no means necessary to resort to a liberal construction of the statute, for the act of the officer is prohibited and declared void in express terms. He was not allowed to fill up any writ of process; it is therefore only a question of fact, whether he did or did not fill up the writ in question, and most certainly he did. After having erased the date and the return day in the old writ, he filled up the blanks with a new date and a new day of return; which was all that was necessary to make a new writ. The old writ was *functus officio*, and rendered null by the erasures. A new writ was then made, and wholly made by the officer. For this he had no authority, and the direction of the attorney could give him none; it was a direction to do an act prohibited by law. The alteration was not made under the direction of the attorney, he being present; but the officer was directed to act as the agent and attorney of the plaintiffs, and to alter the writ or not at his discretion. The alteration therefore was the act of the officer, and not of the attorney, and so was wholly void."

MR. WILLIAMS: Who was the alteration made by in that case?

MR. SMITH: By the deputy sheriff, who proved he had authority of the attorney to do it. But the case that bears with the most importance upon this question, is the case of the *People upon the relation of Davis* against the *Montgomery Co. Common Pleas*, which may be found in 18 *Wendell's* Reports, page 633. I will read a few paragraphs, and the statement of facts. The case arose in this way: a motion was made to set aside a *fieri facias*. The party who had issued it moved for leave to amend, which was denied. A motion was made to the Supreme Court for a mandamus to compel the Court of Common Pleas to vacate their order denying leave to amend, and to command them to grant an order permitting an amendment.

"In June, 1836, two writs of *fieri facias* were issued on two several judgments, in the Common Pleas of Montgomery, against J. S. Davis, one in favor of T. and the other J. Davis, and levied

on the goods of the defendant. By mistake, the year of the teste was 1826 instead of 1836. A *fieri facias* from the Supreme Court was immediately afterwards issued in favor of H. Chapman against J. S. Davis, and also levied. The attorney for T. and J. Davis discovering the mistake, *after the levy* corrected the teste of the executions which issued from the Common Pleas. Chapman moved the Common Pleas to set them aside, and the plaintiff moved to amend. The Common Pleas denied an amendment, on the ground that the attorney had illegally made the correction and set aside the executions.

"A motion was then made for a mandamus, commanding the Common Pleas to grant the amendment."

Judge Cowen, in delivering the opinion of the court, said:

"It is supposed that the improper conduct of the attorney in amending the writs of *fieri facias*, without first obtaining a rule for that purpose, rendered the process merely void; or at least, justified the court below in denying the benefit of an amendment in their discretion, as a discouragement to such an unwarrantable interference with their process. A wrong teste inserted in an *execution* by mistake is always amendable by rule; but without such rule, no process, pleading or record can be amended." I say, in analogy, if an attorney issuing a *fieri facias* cannot amend it without a rule of the court, for the reason I have read in this opinion, then the Governor of the State initiating these proceedings, by this recommendation, has no power to amend it without leave of the Senate.

"The rules of practice are still more comprehensive than the statute, and extend to nearly all the proceedings of the court. Before it is at all acted upon by the officer, process may be altered until it is made correct, although it cannot be altered and used as new process without a new seal, as that would be a fraud on the clerk's office."

Here, the message has been acted upon, presented, read and referred to the judiciary committee; and may I say here if there is any question about that, the reading of the journal that was had yesterday upon the call of the counsel shows it. Shall it be considered in evidence [addressing Mr. Sedgwick]—the evidence of the action of the Senate when it was presented? I suppose there is no objection?

THE PRESIDENT: I suppose the whole journal had better be considered in evidence.

MR. SMITH: It has not been formally offered in evidence.

THE PRESIDENT: The whole journal had better be considered in evidence.

MR. SMITH: I read further:

"In England, they allow a writ before it is executed to be re-sealed and made returnable at another day, provided it be a day at which it might have been returnable when it issued. Even this restriction seems to have reference to the stamp duty. It does not become the exclusive process of the court, so that the party may not control or alter it at pleasure if he defraud nobody, until it is used; as by an arrest or levy, according to its nature. But, after that, it cannot be altered in any way except by rule. Other persons have then acquired an interest in its preservation according to its original form. Then the party must come to the court where it is a matter of course to amend on showing an honest mistake. It never was refused as between the parties to final process. But the court have a right to demand that the mistake should be honest. Where the attorney has gone and willfully destroyed the effect of the process by an alteration, I am not aware that all discretion is to be withheld in granting or refusing the amendment, so much so as to call for a writ of mandamus."

Where the attorney who issued the execution had made a mistake of ten years, the using of figure two where he should have used figure three, makes a change decided to be willful, the court will not even allow, what is uniformly done, leave to amend. They must be satisfied that it was an honest mistake.

"Beside the right of Chapman had intervened under his levy upon an execution from this court. Lord Ellenboro remarked that he was not aware of any case in which the court had allowed the amendment of a *fieri facias* where the rights of third persons were to be prejudiced. It is not necessary to go so far; but here an alteration, which the court below had a right to consider a fraudulent violation of their rules, a fraud upon the statute and the rights of Chapman, had been made. They had the power to pronounce upon such a case, that the alteration was made with a knowledge that it was contrary to the rules of the court."

The judge here is speaking of the propriety of allowing an amendment. They say the alteration was made without the knowledge of the party interested, and though it was manifestly a clerical mistake they have a right to consider it a clear violation of

their rules as you have a right to consider it a violation of your rules, to withdraw a paper from the files and alter it.

"They had the power to pronounce upon such a case, that the alteration was made with a knowledge that it was contrary to the rules of the court."

Pretty plainly here, they had knowledge of this proceeding, and that this proceeding is a violation of the rules of the Senate and the statutes of the State, and that it was an attempt to introduce into the Senate a paper which had been altered.

"It would be going further than we have yet done, to say that a party may knowingly issue process which is void, or knowingly avoid it by alteration, and yet call on the court at all events to make it right. Looking at the manner and motive of the alteration with the rights which Chapman had acquired, the case was so far open to the exercise of discretion in the common pleas, that I do not think it a proper one for a mandamus."

The Senate will bear in mind that the discretion he has talked about is the discretion to allow an amendment, holding that without leave the process is void. In conclusion, the court says:

"It was said that the rights of the clients, the Davises, ought not to be impaired by the act of the attorney. Such a principle would be an answer to every motion to set aside proceedings for irregularity. The act of the attorney in a conduct of a cause is the act of the client. The effect of the alteration, that being willful, was to destroy the effect of the process. It was no longer a protection to the attorney. It could not be restored for the purpose of protecting him by parol evidence, as if it had been lost or accidentally altered, or the teste had been changed by some third person; and the clients must be holden to that consequence as parties."

The intention was to make the process good, by changing the figure two to figure three. That destroyed the process. I am called upon to answer a point suggested by a Senator, that this being a paper issued by the Governor to the Senate, it was under his control, so far as the control to make any alteration was concerned; that though it may have been before the Senate, still it was a message by him, of his own making. So in this case, in *Wendell*, it was one of the attorney's own *fieri facias*; he made a mistake of ten years, and he undertook to correct it. The analogy is complete.

MR. SEDGWICK: The Senate will indulge me, I hope, in an

observation on the new authorities produced. In respect to the authority cited from the 10th of *Pickering*, "where a deputy sheriff, having in his hands a writ of attachment, by direction of the creditor's attorney, but not in his presence, altered the data and the return day of the writ, it was held that the writ was void as against a creditor at whose suit he subsequently attached the same property." The decision in that case went upon that statute in Massachusetts, it being a case in respect to priority of the liens of creditors. The court says :

"The alteration of the writ, as made by the deputy, was in direct violation of the 3d section of the statute of 1783, chap. 44. By that section it is provided, 'that no sheriff or his deputy shall be allowed to draw, make or fill up any plaint, declaration, writ or process, and that all such acts done by either of them shall be void.' This prohibitory and nullifying clause extends as well to the filling up of any writ or process, as to the making or drawing of a declaration. The intention was to prevent the sheriff and his deputies from acting as attorneys, and in the same section they are accordingly prohibited to appear as such in any court, or before any justice of the peace; or to draw or make any plea for any other person; or to assist or advise any party in a suit; and all these acts are declared void. The object of the provision was to prevent fraudulent practices, to preserve officers free from undue influences, and from the temptation of swerving from their duty, in preferring favorite creditors; and it is a most wise and salutary provision; and like all other provisions to prevent fraud and secure the public interest and safety, is to receive a liberal construction. It was framed according to the spirit of the 30th article of the Declaration of Rights, which prohibits the union of the executive, legislative and judicial powers of the government, or any two of them, in the same person or persons. The sheriff and his deputies have great and confidential powers entrusted to them. Their returns on writs and precepts are received as true; and are not to be controverted, except in an action for a false return, and then the falsity must be proved. The return is presumed to be true, unless the contrary be made to appear. This well established principle of law is necessary and essential for the security of these officers; but it gives them great power, and they ought, therefore, in the language of the Declaration of Rights, 'to be as free, impartial and independent as the lot of humanity will admit.' To preserve them so, as far as possible, was manifestly the object of

the section in question. According to this understanding and construction of the statute, it would seem manifest that the deputy had no right to make a new writ, either by using a new blank or by altering an old writ; and that both acts are equally within the intention of the legislative prohibition. The intention was not to prohibit the filling of writs by unskillful persons, but to prevent the sheriff and his deputies from intermeddling with their precepts, or acting as the agents of either party. But it is by no means necessary to resort to a liberal construction of the statute, for the act of the officer is prohibited and declared void in express terms. He was not 'allowed to fill up any writ or process'; it is therefore only a question of fact, whether he did or did not fill up the writ in question, and most certainly he did. After having erased the date and the return day of the old writ, he filled up the blanks with a new date and a new day of return; which was all that was necessary to make a new writ. The old writ was *functus officio*, and was rendered null by the erasures. A new writ was then made, and wholly made by the officer. For this he had no authority, and the direction of the attorney could give him none; it was a direction to do an act prohibited by law."

So that the whole case rests upon the prohibition—the express prohibition, of the statute of the State for an officer in any case to make or fill up a writ. This was done in the absence of the attorney, although, as it operated for the benefit of his clients, in giving them priority, he sanctioned it, either before, or at the time, or afterwards; yet, having been done exclusively by the sheriff, in his absence, the new writ thus filled up by the sheriff was declared to be prohibited by the statute. It is sufficient upon that case. The case in our own courts, in 18 *Wendell*, is an application for a mandamus, directed to the Montgomery county common pleas, to allow an amendment to the writ. The decision goes upon the ground that the common pleas having authority in their discretion to allow or refuse an amendment, and having refused an amendment in the case in question, could not be compelled by this writ of mandamus to allow it. But some observations are made in the course of the case in the opinion of Justice Cowen, which I will call your attention to:

"A wrong teste inserted in an *execution* by mistake, is always amendable by rule; but without such rule, no process, pleading or record can be amended. The rules of practice are still more comprehensive than the statute, and extend to nearly all the pro-

ceedings of the court. Before it is at all acted upon by the officer, process may be altered until it is made correct, though it can not be altered and used as new process without a new seal, as that would be a fraud on the clerk's office."

Now I desire further to call the attention of the Senate to the analogy between these cases. Laying out of view the new sealing of the writ, which is merely a provision for the protection of the officers of the court and their fees, the principle is distinctly laid down by Justice Cowen, that until a process, although delivered to the sheriff and passing out of the hands of the attorney, is acted upon, so as to affect the rights of third persons, it may always be amended by the attorney and is within his control. Now, take this case before the Senate. This message was delivered to the Senate and immediately it was taken, within five or ten minutes, as the proof is, in custody of an officer of the Senate, to the Executive chamber, and this alteration, which is decidedly an immaterial alteration, was made. It does not change the substance of it at all; because the only substantial part of it is the recommendation for removal. It was altered in an immaterial part—altered in favor of the person whose rights alone could be affected by it. Now, the first action upon that was the action of the judiciary committee, in calling upon this defendant to appear before them upon that message. They gave him notice, as it appears in these proceedings, that on a certain day he was to appear, because action would be taken before that committee. That was the first action which affected the rights of the defendant in any way whatever. Before that action was taken the Governor had made this alteration of this paper which he had delivered to the Senate. Now, if there is anything in that case, it establishes beyond controversy the right of the Governor, under such circumstances, to make that alteration. The action was upon the paper which appears in the journal of the Senate, which is this message upon which we are now acting, and according to the authority in that case it is precisely within the principle laid down by Justice Cowen, that the person who issues a paper—the Governor who sends a message—before action is taken upon it, which involves the rights and interests of third persons, has a right to alter it in any material point. If the alteration was immaterial, then whether action had been taken or not, it could not affect anybody. Judge Cowen says:

"It does not become the exclusive process of the court, so that the party may not control or alter it at pleasure if he defraud

nobody, until it is used as by an arrest or levy according to its nature. But, after that, it cannot be altered in any way except by rule. Other persons have then acquired an interest in its preservation, according to its original form. Then the party must come to the court, where it is a matter of course to amend on showing an honest mistake. It never was refused as between the parties to final process."

Now is it contended that here was a fraudulent and intentional wrong committed, a fraudulent alteration of the paper—that the Governor, with a view of injuring a party, made this alteration—that it was done by fraud and imposition? Is that the position which counsel takes in respect to this paper. Unless it is,—unless it was done with a fraudulent purpose of injuring and affecting his rights, then clearly, within the spirit and letter of this decision, the alteration was made at a time when the Governor had a right to make it. The bare fact of its being out of his possession and delivered to the Senate does not take away his right to alter it. If it is done honestly—done before action has been had which affects the rights of the parties, then according to the reasoning of the case, and the express language and spirit of this decision, it was in the power of the Governor to alter it. No action affecting the rights or the interests of other parties was had upon that paper until it was delivered to the judiciary committee, and they took action as against the party. When that was done it was precisely the message that you have here been acting upon, because there has been no step taken in this whole proceeding, from beginning to end, no step affecting the right of the accused, except upon the very paper which is now here. It is a genuine message of the Governor, authorized by him, directed by him, made by him, and acted upon as a genuine message by the judiciary committee of the Senate. The case of The *People upon the relation* of *Stone* against *Minck* was this: It was a contest in respect to an office brought before the courts by a *quo warranto* to try the title of the defendant to an office. The paper in question was the return of the inspectors of election, and the plaintiff offered in evidence the original statement or return of votes made by the district canvassers and filed in the office of the clerk of the Common Council, who was a witness and produced it. I read:

"On inspection, it appeared that the number of votes originally written, both in letters and figures, opposite to the name of the relator was 266. These letters and figures had however been

erased, and over them was written (and repeated in figures over the original figures) 273. If the relator received less than 270 votes, he was not elected. The defendant's counsel objected to the evidence until the erasure and alteration were explained. The judge overruled the objection, and the defendant excepted. There was a verdict for the plaintiffs, and judgment of ouster against the defendant having been rendered at general term in the first district, he appealed to this court."

Comstock, Ch. J., delivered the opinion of the court.

"The number of votes given to the plaintiff and defendant, respectively, was proved only by the statement or return of the district canvassers. If this was properly received in evidence, the plaintiff had a majority of four votes, and was duly elected. We entertain no doubt upon this question. The election laws do not in terms declare that the return of votes made by inspectors of election, or canvassers, as they are called in the city of New York, shall be evidence in courts of justice, but they are so upon well established general principles. In this case it seems that the number 266 had been first written upon the statement as the plaintiff's vote; that this number was erased and 273 written over it, as the return appeared when introduced in evidence. We think the plaintiff was not called upon to explain this erasure or alteration. We are to assume, because the contrary is not shown or suggested, that on an inspection of the writing, at the trial, the larger number was plainly written over the smaller, so as to leave no doubt as to the actual reading of the document, and that the alteration appeared to be made with the same hand as the residue of the statement, with the same ink and at the same time. The law does not presume wrong where none is proved, and I think that even a private writing would be receivable in evidence where no other circumstances appear than those here assumed. But election returns are documents of a public nature, made out and filed in the proper office, under the responsibilities of an official oath, and they remain in the custody of a sworn public officer."

Now then this is authority in addition to what was produced yesterday, that such papers are evidence ; that they are competent evidence. In addition to that I produce the authority of the Court of Appeals that these papers when required to be kept by law or by the Constitution, as are the journals of the Senate, they are conclusive as against any oral testimony. The journal shows that this message was received, because it was entered upon the

jonrnal, as read and approved the next day. The Governor says that it was done by his sanction—by his hand. Although an erasure appears upon it there is no question left that this was done by the express direction of the Governor, by the clerk in his presence. It is therefore a genuine document sanctioned by him. The journal of the Senate proves that it was communicated to the Senate, it was acted upon by the Senate, it was put in the hands of their judiciary committee. It is the precise document which is here questioned. It was put into their hands, acted upon by them, and if any alteration was made in it it was made within the spirit and authority of the decision in 18 *Wendell*, allowing the officer who does it fairly and honestly, without fraud, without corrupt motives, (even although he has parted with possession of the paper, as did the Governor, by putting this paper into the hands of the Senate), to alter it at his pleasure, in material or immaterial parts, until it has been acted upon so that the rights of third parties are in some degree affected by it. It is not pretended that the rights of this party were prejudiced by it; on the contrary, they were preserved by the alteration. He was brought before the Senate by the alteration in that paper, with the presumption of innocence in his favor. It was done for his benefit, and nobody is defrauded or injured, or can possibly be injured by the alteration. It was not acted upon so as to affect him in any way, his rights or interests at all. It was put in the hands of the Judiciary Committee, and he was notified to appear before them. I thank the gentleman for the authorities he has produced this morning, for they serve to make the position I took upon this case yesterday more clear and definite than it was made by the authorities then before the Senate.

Mr. SHAFER: I had no intention to further address the Senate, but I must make a suggestion or two in answer to what has been said by the counsel for the prosecution in reply to the authorities cited by my associate this morning. He undertakes to evade the force of the authority cited in 18 *Wendell*, by saying that until the paper is used or acted upon, his Excellency the Governor had the right to change it, and he even goes so far in his zeal as to allege that the Governor had the right to change it even in a material respect. As he proceeds further in this case the counsel, step by step, grows bold, and finally, I have no doubt, will take the bold step that the Governor may take a message and write entirely a new one from beginning to end, without any communication of it to the Senate. He says that until it is used or acted upon, the Governor may

change it in any respect, and he seems to assume that until it is used or acted upon nobody could be affected by any change that could be made. What is the practice of this body? What was the course that was pursued in this particular case? Now, I call the attention of the Senators to what everybody about this circle knows to be parliamentary law, who has looked into the question at all. This message, as the journal shows, was read, together with the charges accompanying it. What was done with it? It was referred to the committee on the judiciary, and where is the gentleman in this body or in any other, who says that the Senate even then had possession of that instrument. Sir, it does not depend upon the fact whether or not it was thus physically delivered to the chairman. In judgment of parliamentary law, and in judgment of law in every respect, it went directly to the judiciary committee, and it was not necessary to wait until the clerk, to suit his convenience, physically handed the papers over. Tell me, may it please the Senate, how you got that paper from the judiciary committee; how do you get it back in any other way under heaven than to move that the committee be discharged, and the paper returned to the Senate? No other way. Every Senator knows that is the practice. So that it was not only read and acted upon, but was in the possession of one of the committees of the Senate, and no power could get it out except the action by which it was sent there should be reconsidered, and it was returned to the Senate. I appeal to the journal of the Senate, which shows it was returned in March, and until that time it was in the hands of the committee in judgment of parliamentary law. Was it used and acted upon then? Had the rights of third parties been affected? Now mark: Your records show it was referred to the judiciary committee, and that the committee summoned this respondent to appear before it. In theory, the original message was sent to the judiciary committee; and in fact it was sent there. You never sent any other message except the one communicated, and yet it is said by the distinguished counsel that it was not used or acted upon at all. It had not been altered until it was sent there, and until the Senate took some action to get it from the judiciary committee, nobody had a right—not even a member of the judiciary committee—to return it to the Senate, or to his Excellency the Governor. So much as to whether this message was acted upon. I will not stop to cite *Cushing* on parliamentary law to prove that when a docu-

ment is referred to a committee the only way the Senate can get possession of it again is to reconsider its action, or to ask that the committee be discharged and the papers returned. Everybody knows that. Nobody will dispute it. As is properly suggested, the office of the message, and the only office it could perform, and the only operation it could have, was had by the reception of it by the Senate, its reference to the judiciary committee, and the action of that committee upon it. It was not necessary that the clerk should take it the instant it was read, and physically deliver it to the eminent chairman of the judiciary committee. That was not necessary, in order to his possession of it. In theory of law, it went there as quickly as thought can imagine it. Is there any pretense that the President of the Senate can go to the judiciary committee, which has the custody and control of a paper, and physically take it down to the Governor? It has not been so far acted upon, that the Senate, as a body, has lost control of it until it is returned into its possession from this committee. It has lost control over it. No further use could be made of it whatever; and so far as the Senate was concerned, it was out of its possession. Need I argue to this body the distinction between the possession of a paper by the Senate as such, and the possession of a paper by a committee as such? Need I say to this body, that when a bill or petition is referred to a committee, that it is in its possession until reported back to the Senate? Why the reference to the committee, or reports from the committee, if, after all, any member of the body can go and take it back and alter it? It invades the sanctity of your committee. It deprives them of all power and control over their papers, and leaves it to the President or Senate, if they think fit, to take a paper from the committee—aye, all the papers, and have them destroyed, obliterated, or falsified in any respect that they may choose? No. That never has been the practice. It never will be the practice in any well-regulated legislative body. I am certain that no such practice as that can be sanctioned by this Senate. I would like to know, Mr. President, when this committee reported, and I would ask the clerk to refer to the journals. These difficulties multiply as we proceed. A bill is introduced and referred to the railroad committee. I would like to know if it is not the most frequent practice, when committees fail to report papers, to call upon them by resolution to report? Why is there a struggle now and then to get reports from committees, as is always the case when the Senate think that

a committee hold a paper or bill too long? Why is a resolution introduced instructing them to report? It is because the Senate has lost control over the paper until its return. Everybody knows this. You know it as lawyers, because all of you are familiar with parliamentary law, and because it is the invariable custom of the Senate. Now the alarming doctrine is sought to be established that you need not introduce a resolution to discharge a committee, but that you can grab a paper and bring it back to the Senate, or take it back to the co-ordinate branch of the government; and then, after altering or changing it, you can put it back into the hands of the committee as your President returned this message to the judiciary committee. Tell me how did that paper get away from the judiciary committee? How did it ever get back there? Now suppose, to illustrate this doctrine further, that a respectful message (that is practical, and the Senators can understand the illustration whatever may be the difficulty of those not familiar with the rules of law which have been so freely cited here; and those who are not familiar with the legal profession can all understand what has occurred every day in their Senatorial experience); suppose, I say, that his Excellency the Governor had sent a respectful message to the Senate requesting the return of that paper, what would have been done? The first thing that would have been necessary would have been to make a motion to discharge the committee from the further consideration of that message, and that it be returned to the Senate, and then such action on the part of the Senate would have followed as would have returned it to the Executive. I will ask the clerk if he has found the record yet?

THE PRESIDENT: The clerk has found the reference in the journal which the counsel asked for.

THE CLERK: The first report was on the 15th of February.

MR. SHAFER: I mean where the paper was transmitted to the Senate by the judiciary committee.

THE CLERK: It was March 6th.

MR. SHAFER: Then, sir, from the 14th of February to March 6th, this committee in judgment of parliamentary law had possession of this message. No action had been taken on the part of the Senate to discharge the committee. Had it been used and acted upon when it was referred to the committee? And in that connection I would like to correct an impression that seems to prevail as to the course pursued before that committee. I see it

is alleged in a morning paper that the action of the respondent before that committee was such that it made it their imperative duty to convene the Senate for the trial of this case. That is an entire misapprehension, although undoubtedly it is an honest one. The fact was that those who represented the prosecution before that committee (my distinguished friend was not then here) proposed that the committee of the judiciary should take the evidence and report the same to the Senate without expressing any opinion as to the truth or falsity of the charges, and this proposition we objected to. We did object to the judiciary committee performing the mere ministerial office of taking the evidence and reporting it to the Senate. But we expressly offered and agreed that, if the prosecution would consent, that the judiciary committee should take this evidence and report it to the Senate, together with their opinion thereon, we would go on before the committee. Every member of that committee will bear me out in this, and the reason of it was perfectly obvious: those who hear the witnesses and examine the evidence are the most competent to form correct conclusions upon that evidence as delivered by the witnesses. So that the imputation is an unjust one so far as this respondent's conduct having rendered an extra session of the Legislature necessary. The authorities hold that when a paper has been acted upon and other persons have acquired in the paper an interest in its original form, it can not be altered. I have shown that it was acted upon, and there is not any pretense that, even in a court of law, it could be changed in any respect unless by leave of the court, and unless it was first affirmatively and clearly shown that the mistake was an honest one—entirely honest and fair. The counsel says there was no design here to injure, and nothing fraudulent about this. It is not necessary that it should be fraudulent. It is not necessary that it should be falsely or fraudulently forged or counterfeited. All that is necessary is to show that it was designedly, intentionally and willfully changed. That is all that is necessary according to any authority which may be produced. It is not sufficient, as is properly suggested by my associate, for them to show it was honestly done. In the language of this case in *Wendell*, a party must come to this court, where it is a matter of course to amend, on showing an honest mistake. The Governor should have come to the Senate with a message, asking leave to withdraw it that it might be amended. It would be a

matter of course when such a request was received, to return it to the Governor for him to change it in any respect he chose; but it could not have been done without coming here and obtaining leave of the Senate, and then before the Senate would grant leave it must appear that the mistake in the message was an honest and innocent mistake; so that upon all the analogies, I care not in what respect you view them, this message was wrongfully taken not only from the files of the Senate, but from one of the committees of the Senate. How it got back is a mystery to those who are at all familiar with parliamentary law. It never did get back there. The Governor says he directed it to be returned to the Senate.

MR. SMITH: He says he gave no direction.

MR. SHAFER: He said in the first place that he directed it to be sent to the Senate. Then my distinguished associate cross-examined him, and he said he gave no directions about it, except that it was delivered to the President, who brought it down. Suppose he had given directions for it to be returned to the Senate, then this Senate could not get hold of it. Why? So far as its action was concerned, it was in the hands of the committee. It never got back into the hands of the committee in any form, according to the Governor's theory, so that so far as this action was concerned, such a message was never received by the Senate, and it never got back into the hands of the committee. Now, a word in reference to the authority cited yesterday in the 23d of New York Reports, to prove that the record kept by the town clerk of town meetings cannot be changed by parol;—that is, when the record asserts that such and such a thing occurred at a town meeting, you cannot prove something else occurred there. We do not dispute that proposition; but the proposition we contend for, and which is not covered by that case, is that, if after the town clerk had written his record of what transpired, he had sat down and changed and altered those minutes, the fact could be proved—that is what we say. And we say the record, to wit, the Governor's message, was changed. If in the case cited the offer had been to prove that the record kept by the town clerk had been altered, who says it could not be proved? Why, the case cited by the counsel contains no new doctrine. If the record is once made up it is conclusive evidence of what it purports to contain, except it may have been altered or changed. Nobody disputes that. But here we complain that the record itself has been falsified and

changed. Now the Senate is entirely familiar with the rule that the certificate of the canvassers in an election can be disproved. The case of the *People* vs. *Cook* is an authority on this point. Cook got a certificate that he was elected Treasurer. A proceeding was commenced by Welsh to contest the election of Cook. In that case they went behind the canvass, and they showed that votes were deposited for "Benjamin C. Welsh" and "Benjamin Welsh," which were not counted for Benjamin Welsh, jr., who was the party who was a candidate for the position. The court went behind the canvass and allowed the votes for Benjamin Welsh, jr., holding that the votes were intended for Benjamin Welsh, jr., although the inspectors of election had not returned them for him. So in the case of *Saxton* vs. *Hommel*, which occurred in Ulster county; the court went behind the certificate of the inspectors of election, and allowed proof to be given as to what the original vote was, and allowed ballots for the party in whose favor they were evidently intended, although the full name was not written on them. I think my associate has fully demonstrated that this journal is only *prima facie* evidence, and particularly when, in the case reported in 7 *Cowen*, the question was discussed whether the journal of a branch of the Legislature could be regarded as evidence at all. But if your journal is conclusive, certainly it cannot be conclusive upon a party who had nothing to do with making it. Can a clerk make up a journal in the absence of a party affected by it, and it be held as conclusive against that party, although it tells a falsehood so far as he is concerned, and he not be permitted to prove the falsehood? I will tell you upon whom it may be conclusive, if conclusive at all. If there is such a thing as a proceeding against the Senate, and the proceedings of the Senate are a subject of inquiry, it may well be said that the journal of the proceedings is conclusive against the Senate, because the Senate is a party to it. But here is a stranger to the Senate. Would it be said that he who has no control over your journal, who cannot affirm or disaffirm, prove or disapprove of it, shall be prevented from having the truth told in reference to what the proceedings really were? A strange argument indeed is used ubon the other side, that this journal must be regarded as conclusive evidence that the message printed in it is the genuine message, in the face of the statement of his Excellency the Governor that it is not the genuine message. What a doctrine that would be for this body to hold against the rights of a man who

had nothing to do with the making up of the journal, that the message was not changed, when the Governor swears it was changed, and the Lieutenant Governor swears it was changed. Out upon such a doctrine; and when a prosecution is driven to that extremity, it is not decent to maintain it. A prosecution to be maintained upon a palpable lie, sworn to be such by the highest officer of the State and the highest officer of the Senate—when they are driven to such an extremity, it has not, in my judgment, the appearance of decency. It is not that high and solemn proceeding which should characterize this august tribunal. It cannot command the respect of him who is accused, and much less the respect of the world, and it may carry its contumely, as in my judgment it would, everywhere. Such a doctrine has never been held yet, that upon an altered and changed indictment the ends of public justice demand that an accused party should be prosecuted.

Mr. Williams moved that the Senate be cleared for consultation.

Which was carried.

Pending the consideration of the motion of the counsel for the respondents in secret session, the Senate took a recess until four o'clock.

AFTERNOON SESSION.

On re-assembling, the Senate again went into secret session.

On the doors being re-opened, the President announced that the following resolution had been adopted:

Resolved, that by virtue of the message of the Governor, read at the desk of the clerk on the 14th day of February last, this Senate has jurisdiction of the subject matter, and has right, at a proper time, to hear and determine the question of the removal of the respondent from his office.

Mr. SHAFER: As we understand the effect and purport of the resolution, it is that no proceedings have ever been taken as against this respondent upon the message read at the clerk's desk on the 14th of February. Upon that message we have never been heard. It has never been served upon us, and of course we are not in a condition to proceed. We submit, therefore, that we should have an opportunity to determine what course we will pursue in view of the resolution which has been passed by the Senate. We do not

understand what is meant by the expression "at the appropriate time," which is contained in the resolution; whether it is contemplated to proceed to trial now or on some subsequent occasion. We certainly have never been heard upon the message which was read at the clerk's desk, in any way or form. When that message is placed upon the files so that we can know what it is, we shall then know what to do.

MR. FOLGER: I rise to ask the counsel for the respondent whether they are ready to proceed to trial or whether they ask for an adjournment?

MR. H. C. MURPHY: I move that the Senate take recess until five o'clock to enable the counsel to consult.

MR. SHAFER: I don't think that would enable us to determine the course we will ultimately pursue. We have made a motion in behalf of the respondent upon the message which appears upon the journal, to dismiss these proceedings, and we are not told whether our motion is granted or denied, except as we may be able to infer by the statement in the resolution, that some paper upon which we have not moved, upon which we have not been heard as to the question of jurisdiction which we have never seen, and which so far as we know the Senate is in entire ignorance of, confers jurisdiction upon the Senate. That is the position that we are in, and we desire to confer as to the course we shall pursue in reference to the action which the Senate has taken. To do this we think will require the remainder of the day, and we think the proceedings would be expedited if the Senate would adjourn further proceedings until to-morrow morning.

MR. SEDGWICK: I do not desire to press this case, but it seems to me that the jurisdiction of the Senate having been affirmed, the rule adopted should be pursued; that is that the charges and the answer shall be read. An adjournment for the mere purpose of finding some further excuse for delay seems to me to be unreasonable. It is a waste of the time of the Senate. The counsel having consumed so much time in mere dilatory motions, it seems to me that the Senate should proceed to the subject matter of the trial. I submit that it is time the charges and answer should be read in accordance with the rule adopted by the Senate.

MR. SMITH: We are not able to determine from this decision that has been read to us, what conclusion has been arrived at as to the question of fact, to which our evidence was directed, and upon which our motion was made. When this trial was first com-

menced here, as you remember, we asked that the message on which these proceedings were predicated, should be read. It was read. We offered to prove that the message had never been communicated to the Senate. We claimed we had proved that, and then assuming it to be proved, we moved for a dismissal of the proceedings. It is now adjudged that the message that was read to the Senate on February 14th, confers jurisdiction. Now it will not be said to be a quibble or mere technicality, that we should desire to know what that message was—what communication it made to the Senate,—whether the Senate could hold that the message, in fact, was of the purport sworn to by Mr. Demers, or sworn to by Mr. Hastings, or was something else. We have a right to know, and it is not dilatory—it is no quibble, that we should ask, and place ourselves in that position at least, where we may demand of this Senate in some way to declare and decide this question. As it stands now, nothing at all is decided; and the complication of this thing, instead of being diminished, is intensified. The question on the regularity of the proceeding, which we have raised, instead of being decided is entirely and wholly evaded. Now, it cannot be seriously contended that we can be forced to go to a trial of this case by commencing the reading of the charges and answer, when there is not a man in this chamber who knows on what the Senate claim to found their jurisdiction, nor a senator who knows with certainty what communication was made to the Senate by the Governor on the 14th of February. Therefore we make, in the first place, the general inquiry, with the hope that some member of the Senate will inform us more fully than the resolution does, the view which the Senate entertains, if it has arrived at one, in reference to the question presented. [The counsel here paused.] As there is no disposition manifested to furnish us such information, we ask that we may have time, after a copy of this resolution is furnished to us, to present such considerations as will save our legal rights on the points involved. The senators will perceive that this resolution now adopted, and our proceeding to trial without passing upon the question, not only deprives us of any point made by our motion, but deprives us of the benefit of the motion we first addressed to the Senate in reference to the sufficiency of the message. That is entirely cut off by this resolution, because the resolution says the Senate has decided that our facts are accurate—and it decides that this paper, which we claim was insufficient in form to confer

jurisdiction, was not the message which was sent to the Senate, but the paper which was read and was destroyed was the message sent to the Senate. I am surprised that the learned counsel upon the other side should be so flushed with the achievement that he has made; that he should insist now, with an entire new message presenting entirely new questions, that we should proceed to trial; and it is equally surprising that he should so often and so repeatedly arrogate to himself the right to pass upon the guilt or innocence of this respondent, and upon the good faith of his counsel. It has been repeatedly charged, and I think without anything to justify it, and it is due to us that it should be repelled—that we are placing obstacles in the way of the trial; and counsel has no right for anything that has occurred to repeat the accusation. In what I have said, I have endeavored to bring the minds of the Senate to the state of facts existing, and to show that if we would protect the rights of our client we must have an opportunity of presenting such considerations as will give us the benefit of the rules, if the law should be disregarded here, and we have occasion to resort to other tribunals. We should be recreant to the trust imposed upon us—it would be a want of fidelity to our client—if we failed to present these questions. I allude to it now, after the counsel has so often suggested that we are guilty of trifling and raising points to prevent a trial. It is our right and duty, and we intend to devote ourselves to the faithful discharge of this trust while we are allowed to do so.

Mr. SEDGWICK: I contend this precisely: that this Senate having twice solemnly affirmed their jurisdiction concerning the matter of this trial, it is a matter of no consequence to the respondent, but is a matter solely between the Senate and the Executive what the terms of the message were which brought these charges before them for trial; and the Senate having twice affirmed that it was sufficient to give them jurisdiction in this matter, I think it is not unbecoming in me to insist now that there shall be a trial upon the merits of the case. If the counsel upon the other side are not prepared for a trial, and make a motion for an adjournment for that reason, that is one thing; but I do insist that adjourning from time to time, for the purpose of seeing what further thing can be found and interposed between a trial upon the merits, is not becoming. And I am not surprised at the conduct of the counsel for the respondent. I am not surprised at those extraordinary efforts to avoid a trial upon the merits at all, but I do

insist it is due to the cause of justice and to the dignity of this court, that there shall be some limit to dilatory motions, and that this case shall proceed to trial upon its merits at some time, and I insist that the time has arrived now.

MR. SHAFER: Suppose we should call for the reading of the message as read by the clerk from the desk?

MR. FOLGER: That is just the point I wished to arrive at, to know whether the counsel are now ready to proceed to trial; if they are ready to proceed, the next step will be taken; if they are not, we can decide upon an adjournment.

MR. SHAFER: That is what we are unable to answer, unless we know what is meant by that decision. As we progress we, perhaps, can understand. It has been charged in every single remark made by the counsel for the prosecution what I maintain was never heard before, that we make these motions as barriers between guilt and punishment. I use his language. He says these motions are made as barriers between guilt and punishment, when we are discussing questions of jurisdiction which do not touch the merits. My associate has very properly repelled any such insinuations, and I say now there is no disposition on the part of this respondent to evade a trial in the least degree, when we once know what to try. We now, if you please, as a matter of argument, make a motion that the message as read from the clerk's desk be now read to us; you might as well summon the spirts from the vasty deep as to produce it. I see the expression of this Senate; but I say you might as well fall upon the graves of the dead, and try to bring them to life, as to try to resurrect that message as we understand it. I have no doubt that the Senate intend that we shall, in some way, manner, or form, know what that message was. Why, what was it? Read it to us from the clerk's desk. Suppose the clerk reads according to the version of Mr. Demers, "therefore I recommend the removal of the said county judge unless he establishes his entire innocence, or disproves the charges that are made against him." Suppose it is read thus, must we commence to prove our innocence? Is the *onus* upon us to establish our innocence before the prosecution prove a word of guilt? This is not a matter of technicality; it is not a matter of form; it is a matter of substance for us to know whether we are first to prove our innocence, or whether the presumption of innocence is thrown around us. That is a matter of importance; that is not a technical question in any way or form; or take the version of the

private secretary, "that he be removed unless he disproves the charges or establishes a satisfactory defense thereto." Shall we commence by proving our innocence and establishing a satisfactory defense? Those are the questions that may arise when we know what that message was. Who can tell us what it was? Say the Senate by their resolution that they have jurisdiction by reason of the message read from the clerk's desk, when there is no record of it, and no human memory as to what it was. The thing resolves itself into thin air. It is absurd. It does not exist upon your records. It does not exist upon the tablets of the memory of either of the witnesses who have spoken of it. Yet it is claimed that, by reason of this, jurisdiction exists. We are unprepared to say whether we shall commence by proving our innocence, or insist upon the prosecution proving our guilt. We are unprepared to say what our rights are under the message as it originally stood, because we know not what it was, and we cannot be supposed to know more upon this subject than mortals ordinarily know. The Senate have resolved that, by virtue of a message of which we are ignorant, it has jurisdiction. If possible, we want to find out by some mode what that message is, and it is not unreasonable to ask, inasmuch as the question which has been submitted has occupied the attention of this body for at least six hours, that we should have sufficient time to determine our course. We submit that the objection to the postponement ought not to be persisted in; and if it is persisted in, that it ought to be overruled.

Mr. FOLGER: What is the motion?

The PRESIDENT: The chair understands that there is no motion on the part of the counsel for the respondent, but a motion upon the part of the counsel for the prosecution that the charges and answers be read.

Mr. FOLGER: Are we to understand from the counsel for the defense that they are ready to proceed? If the counsel are not ready, I am willing to grant as long an adjournment as they say, upon their responsibility as counsel, it is necessary for them to have. But if they are ready to proceed, I have another motion to make.

Mr. H. C. Murphy moved that the Senate adjourn.

Mr. FOLGER: I ask the Senator to withdraw his motion to allow me to submit a motion that the respondent and his counsel be permitted to retire, and that the Senate go into secret session,

with the understanding that there will be no session requiring the presence of counsel till to-morrow morning.

Mr. Murphy withdrawing his motion, on motion of Mr. Folger the Senate was cleared for consultation.

On the doors being opened, on motion of Mr. Pierson, the Senate adjourned.

FOURTH DAY.

Albany, *June* 15, 1866.

The Senate met pursuant to adjournment.

A quorum being present, the journal of the previous day was read and approved.

The PRESIDENT: The chair informs the counsel for the respondent that the Senate desires the paper which has been offered in evidence upon the part of the respondent to be delivered to the Senate.

Mr. SHAFER: I have it here. The reason why it was not furnished yesterday to the Senate upon the request made when the Senate was in secret session, is because it had then gone into the hands of the lithographer to be printed.

On motion of Mr. Gibson, the Senate was cleared for consultation.

On the doors being re-opened, the President announced to the counsel that the Senate had adopted the following resolution:

Resolved, That the motion of the respondent to dismiss the charges and discontinue the case be and the same is hereby denied.

Mr. SHAFER: We now call for the reading of the original message as read from the clerk's desk on the 14th of February last.

The PRESIDENT: The clerk will read the message.

The clerk proceeded to read the message called for in words as follows:

State of New York, Executive Department,
Albany, *February* 14, 1866.

To the Senate:

I respectfully transmit herewith charges and specifications presented to me, alleging official misconduct on the part of George W. Smith, county judge of Oneida county, with petitions accom-

panying the same, and I recommend that inquiry as to the truth of the charges be immediately made in accordance with the provisions of section eleven, article six of the Constitution.

This section does not clearly define the details of procedure prior to final action upon the question of the removal of judicial officers, and there are no precedents within my knowledge to guide the action of the Senate in this instance. I have presumed, however, to refer the entire case for your consideration, without any preliminary examination on my part, with a view of forming correct conclusions as to the guilt of the party charged with malversation in office, or learning his defense, believing that this proceeding is wholly within your jurisdiction.

In my judgment this section of the Constitution, by reasonable construction, invests the Governor with the duty of making a recommendation based upon an *ex parte* presentation of the case, and as this course would seem essential to confer jurisdiction upon your body, I must assume that the charges presented to me, and duly verified, are true.

I do, therefore, recommend that the said George W. Smith be removed from his said office, if in the judgment of the Senate upon trial he shall fail to disprove the charges which are made against him. R. E. FENTON.

MR. SHAFER: This is the first time that we have ever had any knowledge of such a message, and I now rise for the purpose of making a special objection. This message, to this respondent, is as though it had now for the first time come before this body, and while he was at his residence in Booneville, in the county of Oneida. Therefore we raise the special objection, that although the Senate have declared they have the jurisdiction of the subject matter, to wit, the removal of the respondent, the Senate have no jurisdiction over the person of this respondent no more so than if he was now at Booneville and this message had never been received. You have no jurisdiction over his person. Lawyers understand well that two things are essential to confer jurisdiction, first of the subject matter, and second of the person, that the process with the message must be sent to the accused, and he must have notice of it before you can proceed. Everybody concedes that this message or recommendation is essential to confer jurisdiction upon the Senate, not only of the subject matter, but that he must also be served. Now the process to appear that must be sent as the basis of the proceeding has never been served. Therefore you have no jurisdiction over our person and no power to proceed against us on that message.

MR. SEDGWICK: I do not understand that there is any motion

pending. Jurisdiction of the person is conferred by the Constitution. No process is necessary to be served. No processs is provided for. The respondent is not to be arrested. He is not to be taken into anybody's custody. The Constitution provides that being charged with offenses and his removal being recommended by the Governor, he has a right to appear. He is to have notice of the proceedings, and a copy of the charges and he has a right to appear; but the Senate issues no process to bring him into custody to get jurisdiction and control of his person. He is at entire liberty to leave these charges undefended and to go away from the Senate if he chooses; but it does not stop the proceedings of the Senate if he chooses to absent himself. If he makes no defense the Senate proceed upon the charges presented and act upon them, and if they find them sufficient they concur in the recommendation of the Governor, and if the respondent declines to appear or waives the right to answer and defend himself, it is not material to those who are prosecuting this matter. That he has had notice, abundant notice, and has almost exhausted the inventive genius of his counsel in making delay in this case, seems to be apparent, and whether he chooses to appear or not we shall be inclined to prosecute these charges if the Senate are disposed to hear them.

Mr. SHAFER: I agree with the distinguished counsel that if we see fit to waive our rights the Senate may proceed; but the point I take is to prevent a waiver of our rights. The counsel says there is no provision in the Constitution requiring the service of process. I would like to know whether there is any article requiring the service of process upon a person who is impeached? There is no question about it, yet I will appeal to the Senator from the thirty-second whether formal process was not issued and served on the occasion of the impeachment of John C. Mather? and I appeal to every lawyer to know whether the process which issues to the defendant is not essential to confer jurisdiction? The doctrine advanced on the other side is absurd. How do you get jurisdiction of the subject matter? You get it by the message of the Governor. How do you get jurisdiction of the person? You send a process to the residence of the person, informing him of what has been done. Here, for the first time in the history of this case, this respondent is now told that this message is part of the complaint against him. I call for the document that was served upon this respondent; I mean not only the message but

the charges accompanying it. We will see whether we have been served with a copy of the complaint, as the Constitution requires.

THE PRESIDENT: The chair is informed that it is in the possession of the judiciary committee.

MR. GIBSON: It is in the possession of the accused.

MR. SHAFER: I call for the original of the copy served upon us.

MR. SMITH: The original is served; the copy is simply the notice.

MR. SHAFER: Well, that is the fact, and the judiciary committee will not dispute it, that accompanying the charges was a copy of the message as it appears upon the journal. They gave us notice that such a message was received, and that accompanying that message were the charges. That is the complaint mentioned in the Constitution. What does the Constitution provide. It provides "that no removal shall be made by virtue of this section unless the cause thereof be entered on the journals, nor unless the party complained of shall have been served with a copy of the complaint against him, and shall have had an opportunity to be heard in his defense." Have we been served with a copy of this message, or have we been served with that message, which was changed, as a part of the complaint against us. Can you take from these charges the paper that was attached to it—the message—and say that that shall form a part of the complaint, and attach to it the one you made this morning? The Senate cannot do that. You might as well say "we will strike out the first, second, third and fourth charges, and allege that the remainder shall be regarded as a copy of the complaint served upon you." I appeal to this body that every rule of law cannot be disregarded. It is our constitutional right, guaranteed to us, to have a copy of the complaint served upon us, and that is essential in order to get jurisdiction over the person of this respondent. Not having been served with that, it is just precisely as if it had been just received by the Senate, and it was the first that we have ever heard of it. We are not presumed to know anything about it. We came here to defend ourselves upon a message which you say we are not to defend ourselves upon. We came here for the purpose of showing that you had no jurisdiction by that message. You say we are not to be tried upon that message, but we will try you upon another message entirely. We say then that is not the entertainment to which we were invited, and till you inform us and serve

us with a copy of the complaint, you have no jurisdiction of the person of this respondent. How would you make up a record in this case? You would make up your record by showing (because that is the commencement of it) that a message was received from the Governor, accompanying which were charges. You cannot detach the one from the other, and say that one is complete without the other. Then you make the record by the message, by the charges, by the proclamation of the Governor reconvening the Senate, and by the proceedings from day to day; and if it becomes essential to change the groundwork upon which it is based, to wit, the message; or if it becomes necessary to disturb the charges, those must be served upon us. I put the simple question: has there been a service of the copy of this original complaint against us? None within the meaning of the Constitution. We do not waive it, and we raise the express question now, and call upon this Senate to say that they have no jurisdiction over the person. If it is true that this case is to be tried on the original message when we shall have had that duly served upon us, and we shall in due and legal form have notice of it, if the proposition is right that the original message confers jurisdiction, then you obtain jurisdiction over his person and you do not otherwise.

Mr. CROWLEY: Do I understand the counsel to claim that it is necessary to serve a copy of this message and the charges upon the respondent?

Mr. SHAFER: Yes, sir; we raise the question of jurisdiction on that. We say that the Senate has no right to assume jurisdiction over the person of this respondent when he has been arraigned on a mistaken message.

Mr. WILLIAMS: I would like to know whether I understand this question rightly. Is it a motion to discharge the respondent by reason of the non-service of the message of the Governor?

The PRESIDENT: The chair so understands it.

Mr. SHAFER: The motion is to discharge the respondent on the ground that no jurisdiction has been obtained over his person, because a copy of the complaint has not been served upon him, according to the provisions of the Constitution.

The PRESIDENT: The counsel will reduce his motion to writing.

Mr. SHAFER: It is hardly necessary to do that, as the stenographer takes the proceedings which makes the record. I will not put it then in that form. I will put it in this form: that

we object to a further proceeding against this respondent because the Senate has failed to obtain jurisdiction over his person by not serving him with a copy of the complaint.

THE PRESIDENT: One of the rules of the Senate requires that that should be submitted in writing, for the purposes of the journal, in order that there may be no mistake between the counsel and the clerk.

MR. SHAFER: Perhaps it is better to follow the rules.

MR. SMITH, in behalf of the respondent, submitted the following:

1. Respondent objects specially to the jurisdiction of the Senate to continue these proceedings against him, for the reason it has no jurisdiction of his person, inasmuch as no copy of the complaint against him has ever been served; that instead of the message now read, the message as it appears upon the printed journal was served upon him as a part of the complaint.

2. That in accordance with the constitutional provision that he shall have an opportunity to be heard in his defense, a copy of the Executive and Senatorial proceedings must be served upon him, and he must be afforded a reasonable time to make his defense thereto.

3. That the Senate has not acquired the right to proceed in this case upon its subject matter as claimed by the Senate, because the defendant has not been served with a copy of the complaint as it is stated from the clerk's desk.

4. That this respondent respectfully submits that by reason of the action of the Senate in reference to the message, he is taken by surprise and is unprepared to proceed; and asks a reasonable time to prepare for his defense.

The President put the question to the Senate.

MR. GIBSON: I wish to inquire of the counsel for the respondent, how much time would be considered a reasonable time to prepare for trial?

MR. SHAFER: That must be left to the judgment of the Senate.

MR. SEDGWICK: I do not see, Mr. President, why the prosecution might not go on and submit their case. Perhaps the other side in that event would find it easier to prepare, if they had the case on the part of the prosecution before an adjournment. We shall interpose no objection to a reasonable adjournment; but we are prepared to put in our case to-day, and finish it during the

day, if the Senate are disposed to hear us, and then the counsel on the other side cannot be surprised when they come here again, when they know all our case, and they will know what they have to defend. I am disposed to give them the full benefit of knowing all our evidence before you take an adjournment. As to this matter mentioned in the plea, irrespective of its being a mere question of adjournment, I do not know that I ought to say any thing about it. The message is not required to be served; the charges are to be served. The whole history of these proceedings will appear from two reports made to the Senate by the judiciary committee, one detailing the proceedings up to a certain time, and the second showing what took place at the meeting of the committee when the respondent, his counsel and the counsel for the prosecution were present, showing that the charges in this case were served, agreed to, and answered by the respondent deliberately in writing, and the whole issues in respect to this trial settled with the concurrence of the judiciary committee, the counsel for the respondent and the counsel for the prosecution; and an election was made at that time to be tried before the whole Senate instead of before the judiciary committee, upon these charges. So that the surprise is rather extraordinary, when the issue was framed on the 1st of March. The charges as finally settled were served on that day, and an answer put in.

Mr. SMITH: I do not propose to engage in any further discussion in detail on the questions of jurisdiction that are raised in reference to this matter. I simply wish to restate the case as it is now presented, and make a reference or two to the Constitution of this State; for it seems to me that upon a simple statement of the facts, if our right is not manifest, I cannot make it clearer by any attempt of mine to demonstrate it. By a message alleged to have been communicated by the Governor to the Senate, it was recommended to the Senate that Judge Smith be removed from office if, upon a full and fair trial, he should be convicted of the accusation made against him. That message, with the papers embracing the details of the accusations, as it was claimed, was served upon the respondent, with notice to appear and make his defense. He did appear. Specifications in some modified form were prepared, to which our answer or plea was put in, and the issue thus joined came on to be tried before the Senate of this State. The objection was then taken that the Senate had not acquired jurisdiction, because that paper on which they were proceeding was not a message from the

Governor. The Senate have sustained that objection of the accused, and have deliberately decided that that was not the message of the Governor which was served upon the respondent as a portion of the complaint against him. The Senate then decided that another paper which was read to the Senate, as a communication from the Governor on the 14th of February last, was the message. The proof shows that that original paper, of which no copy is in existence, if there ever was any, has been destroyed. The Senate have undertaken to supply the portions of the message that were destroyed upon the direction of its author, with the sanction of the presiding officer, or at the instance of the presiding officer of this body, and then, without a copy of it being served on the defendant, without any change or modification of the original complaint made against him, the paper still standing upon the record here, and differing entirely from the one on which you are acting, and with a notice served upon us that "in pursuance of a message a copy of which is hereto annexed," we are asked to proceed to trial. Why, what a record this will make. I will not discuss it. Can it be possible that any citizen or officer can deliberately assert or adjudge that a message of which an accused is notified that a copy is annexed to the charges served upon him, can have its whole form changed, and when he comes to trial another message can be substituted by a vote of the Senate, and he be required to proceed to trial upon that message unless he shall be satisfied to have some time awarded to him after the prosecution puts in its proof? Sir, there never was a deliberate attempt anywhere, under any form of government with any official power, hereditary, elective or otherwise, to treat the rights of an individual in that way. Now, it is said (and this is the only further point I wish to suggest) that there is no constitutional requirement for notice. The constitutional expression is precisely the same that secures the right of notice in any case. There are many proceedings. There is the proceeding upon which your land is taken for public improvement in the exercise of the right of eminent domain, and the assessment upon it. There are summary proceedings of various characters provided for in this State, and this would be one of the most summary of them, if the fancy of the counsel upon the other side is to be indulged. The language of the Constitution provides—I will read the beginning:

"No person shall be held to answer for a capital or otherwise infamous crime (except in cases of impeachment and in cases of

militia when in actual service; and the land and naval forces in time of war, or which this State may keep with the consent of Congress, in time of peace; and in cases of petit larceny, under the regulation of the Legislature), unless on presentment or indictment of a grand jury, and in any trial in any court whatever, the party accused shall be allowed to appear and defend in person and with counsel as in civil actions."

Does not that secure the right for him to have notice? If you cannot assess the value of a man's land taken from him in a proceeding under this constitutional provision, until he has an opportunity to be heard in his defense, much less can you make an adjudication that will affect his rights, and say that he shall be heard in his defense without notice. This defendant has been brought before this tribunal upon a notice which is a copy of the message that was made by the Governor, and charges accompanying it. Having brought him into the Senate Chamber upon that accusation, you have decided that there was no such message upon which you are acting; and you have declared what was the message. And now it is proposed, without the reasons being stated, without any specification being drawn, without any notice of this charge being served, that he proceed with the trial. There is one other thing, sir, about this proceeding against which no man, no combination of men, no political combination can be formed or organized which can stand, and that is the recommendation upon the original message here of the Governor, setting forth that he never has examined the accusation against this man; that he has not even made a preliminary examination of the proofs against him; that he has not even made an examination that enables him to express any opinion as to his guilt or innocence, and yet it is recommended to this Senate that they remove him unless he can prove his innocence before them. Now I ask if it is unreasonable for this man, when, within an hour, the nature of the paper upon which the prosecution is to be carried on, to say, "I deny your right to proceed upon these charges against me, until you have given me the rights the Constitution secures to me; until you have served me with the paper and given me notice, and given me time to reflect and consider what I shall do, and to prepare my defense upon such reflection and consideration and consultation." It cannot be possible that those about this circle, who have the dignity of this State or its officers at heart, from any motive or desire to uphold the officers of the government in this State, can be willing now to

hold that this trial shall proceed under circumstances like these. It is said by the counsel on the other side, "We can proceed with our evidence; we can proceed with our part of the case now." This paper is of the greatest importance in view of preventing and forming an issue. That issue should be formed on this message. The complaint should be distinctly made. This whole thing is to be entered upon the journal. The Constitution requires that the complaint shall be distinctly made, the issue formed, and a trial had in view of their evidence and of ours. Now suppose you proceed. What will the record show? One message. What does your action to-day show? Another. What does the complaint show? One message as a part of the complaint. What are you acting upon? Another. That is what the record will show, if the Senate indulge the counsel in his claim.

Mr. WILLIAMS moved that the Senate be cleared for consultation.

MR. H. C. MURPHY: Will the Senator withdraw his motion for a moment? I would like to inquire whether the original complaint is in possession of the clerk?

THE PRESIDENT: The chair is informed by the clerk that the original is in the hands of the printer.

MR. H. C. MURPHY: I would ask the counsel for the respondent to let me take the copy of the complaint served upon them.

MR. SMITH: The copy is at my office.

THE PRESIDENT: The chair is informed by the clerk that he has a copy here.

MR. H. C. MURPHY: I desire the copy of the complaint served on the respondent.

MR. WILLIAMS: It is to be found here among our documents.

MR. H. C. MURPHY: I desire the paper that was served upon the defendant, or some evidence of what was served upon him. Until I get the papers, I must decline to go into a consultation.

MR. SHAFER: I will go at once to the office and get the paper.

MR. H. C. MURPHY: With that understanding, I will withdraw my objection to the motion of the Senator from the Twenty-fifth.

The motion of Mr. WILLIAMS that the Senate be cleared for consultation was carried.

On the doors being opened, the President announced to the counsel that the Senate had passed the following resolution:

Resolved, That the objections now made by the respondent be, and the same are hereby overruled, and that the question of an adjournment to the respondent be, and the same is hereby reserved.

MR. SHAFER: Mr. President, during the secret session the counsel for the respondent took the liberty to send in a paper to the Senate, which they had desired.

THE PRESIDENT: It is in the custody of the Senator to whom it was sent. In this connection the chair will say, although it is not in the resolution, the question of an adjournment is reserved for the purpose of hearing a motion on the question of adjournment by the counsel for the respondent.

MR. SMITH: The paper which has been referred to has been before the Senate for its consideration; and for the purpose of making the record clear, we ask that it be regarded in evidence on the record before the decision which has just been announced. I suppose there will be no objection to that.

MR. SEDGWICK: What is it?

MR. SMITH: The paper served upon us.

MR. SEDGWICK: It purports to be a copy.

MR. CROWLEY: It is the same that is on the files.

MR. SHAFER: There can be no file which shows that paper. I have seen none. The files do show everything except the clerk's certificate.

THE PRESIDENT: The chair understand the counsel to be entirely right that the copy which is a part of the journal of the Senate has not the clerk's certificate.

MR. SHAFER: That is the point we want to make. We want it on the journal so that it may be on the record now.

THE PRESIDENT: If there is no objection on the part of the counsel for the prosecution, or the Senate, the chair will entertain the motion.

MR. SEDGWICK: What is the motion?

MR. SMITH: We would have a right, I suppose, now to offer in evidence this paper for the purpose of renewing the motion, but for the purpose of saving time we ask that the record may be so made as to have it appear that this paper was given in evidence by the respondent—as the paper served upon him—on which these proceedings are founded, and that this was given in evidence before the decision. It can be used, I suppose, as authentic. The only point on which it differs is the certificate of the clerk, that

"the foregoing is a correct copy of the original complaint and the whole thereof."

THE PRESIDENT: It is the understanding of the chair that the counsel for the prosecution makes no objection. Unless otherwise ordered by the Senate the motion is granted.

Mr. SMITH, on behalf of the respondent, presented the following:

The respondent moves an adjournment, saving to himself now and at all times hereafter all benefit of exception in fact and in law to the alleged message read this morning and the jurisdiction of the Senate to proceed thereon, and assigns as reasons for this motion, as he verily believes, and as he is advised by his counsel, he cannot now safely proceed with the trial of these proceedings; that the reasons amongst others, why he is not prepared, are that as the questions now involved he is advised and believes he requires other and different preparations for trial than he has now made, as well upon the law as the facts, and this he is ready to verify.

MR. WILLIAMS: I would suggest to the counsel that it is usual to file an affidavit of preparation. It should be in some form so that the Senate could act.

MR. SEDGWICK: Mr. President—I desire to say what I said in substance before, that I shall not oppose any motion for a reasonable adjournment for preparation for trial, but I deem it due to the prosecution of this case to say, that I do object to any postponement for the purpose of renewing motions, having no relation to the merits of the case, which seem to me to be interposed for delay merely. If it is for the purpose of procuring witnesses to make a defense upon the facts of the case, or upon law involved in the charges which are to be tried, then I have nothing further to say. But if it is for the purpose of renewing this kind of warfare, that has been carried on for the last three or four days, then I desire to oppose and to protest against it. That may as well be finished now as at any time.

MR. SHAFER: Mr. President—With all due respect to the Senate, we understand the effect of the last decision to be, that the Senate claim they have full jurisdiction of the subject matter, and of the person of the defendant. We understand the Senate have reserved the question whether they shall have a postponement because of any reasons that we can present. That the Senate have arrived at this conclusion after careful consideration, we

concede. We respect that decision. In saying this, we say at the same time that it so far surprises us, and it is so far contrary to the preparations we have hitherto made, and so far in opposition to our legal notions of the rights of the respondent, that we are surprised as if we were summarily at this moment brought into the Senate and asked to proceed with the trial. We say now, as we are advised, that the Senate having decided that they have jurisdiction of our person, we desire witnesses from localities who otherwise would have been entirely unnecessary. I do not understand any rule prevailing in this body, either in theory or practice, which requires an affidavit of merits.

MR. WILLIAMS: The counsel misunderstood me. I did not ask for an affidavit of merits.

MR. SHAFER: It is the same thing. A defendant cannot postpone a case on account of the absence of a material witness, without an affidavit of merits—without he will swear that he believes he has a defense, and he is advised by his counsel that such person is a material witness without whose presence he cannot safely proceed to trial. That is what I mean by an affidavit of merits. We came here to establish one line of defense, and we have succeeded. We came here to establish that upon that message as printed in the journal, and as served upon us, we were not called upon to speak. We prepared ourselves with reference to that, and the Senate agrees to-day that we prepared ourselves successfully. We say that in our judgment as lawyers, another question arises. It will not do for the other side to say, for the purpose of forestalling this, that an adjournment should not be granted unless we will say we will not raise any legal questions. He is willing to let us have a postponement if we will make a stipulation that we will not open our mouths upon the legal rights of the respondent and make no further question as to jurisdiction. Was it ever heard of, even in the Star Chamber, that before a party could have a postponement he should stipulate as a condition that he would do this or do that? Will this Senate sanction a doctrine that before a party shall be allowed to postpone for an hour, a day, or a week; before he shall have time to collect his scattered thoughts upon a message which is brought to light for the first time this morning, he must stipulate to be silent as the dead as to his legal, constitutional rights? Does this Senate by its action, which is being literally reported, desire to establish in the first cause of this character before it in the history of the State, thereby making a prece-

dent, that before a right shall be granted to a party, he shall stipulate to forfeit another? Does my friend desire to insist upon any such position as this? You have established, and you have done it conscientiously and according to your best judgment, that you have jurisdiction of our person. We think not. But you say we are here with power on your part to pass judgment upon us and to remove us from office, which is quite as dear to us as life, because of the consequences if you should render that judgment. By reason of action that you have taken within the past two hours, we say that we are not prepared to proceed to trial. The answer is made that unless we stipulate to waive every legal right we can not have it. We are not prepared. We do not understand under this proceeding as it now exists, what our rights are. The respondent, although a lawyer and a judge, has not had time to collect his thoughts upon the subject. Shall we then introduce an affidavit to show that Mr. A resides at such a place, and that it requires such a length of time to get him here, and that he will testify upon such a point, in order to entitle us to an adjournment? Is that the rule that is to prevail in this body? Suppose now, I say, that you have no jurisdiction. You declare it. We do not question it now, except as it may arise hereafter. What is decided we regard as *starre decisus* so far as this tribunal is concerned. It is precisely as though you had summoned us for the first time, especially as we regard the burden of proof. It will not do to say that the burden of proof is this way or that way. That has not arisen. You have decided that we are legally before you. We have a right to show what is the effect of this decision, which we did not understand was the fact or the law before it was made. Has a lawyer or his counsel ever been required to swear to what he understands the law to be? If that is the design, that unless we put in a formal affidavit, such as would postpone a cause in a justice's court, of course the party who feels that he is entitled to an adjournment cannot make it, unless he is put upon the stand and examined and cross-examined as to the necessity of the adjournment, and even then he cannot make it. Does it come down to that technical quibble, that before a party can make a motion of this character he must produce an affidavit? Does it come down to any such question? It comes down to this simple point, and it is comprehensible to senators, if anything. We came here upon an alleged record, and we said there was no such record. The Senate concede there was no such record. We thought if we

proved there was no such record, there was an end of it, as we had a right to do, when the Constitution provides that a copy of the complaint shall be served upon us. If no copy of the complaint was served upon us, as a lawyer had I not a right to suppose there was no valid proceeding, although you differed from us as judges? Did not it present a question for the consideration of this body for three long hours, whether a change in the message did not call upon the Senate for a dismissal of this proceeding, so far as he was concerned, on the ground that you had no jurisdiction over his person, because it was necessary to bring him here by some formal process? You say he has made a mistake. It is a mistake that his counsel is responsible for, and he is responsible for. It is a mistake that many would have made. But you are the judges, and we cannot review your decision. But in view of that, we say we are not prepared to proceed as we would have been if what you now say was the message served in March last. The other side say that it cannot be done. They say there can be no legal question about it. That is assuming that the party has been heard, that it has been decided what are our legal rights under that message. With great respect to the Senate, though they may have decided that the message conferred jurisdiction, it is a very grave question whether it did; and the counsel say that if we do not stipulate not to attack that message—unless we stipulate that we will not aim any of our batteries at that, we ought not to have an adjournment. We have never been here upon that message. I have never examined its provisions. We do not understand the nature of it; and unless the Senate will go one step further, and decide that they can proceed without the message at all, we have a right to understand it. If the Senate will adopt a resolution of that kind our mouths will be sealed, and we stand upon the simple charges alone. It is clear to us that some message must come from the Governor in order to confer jurisdiction; and it is clear to us that something must be made apparent to us before you can get jurisdiction over us; and it was entirely clear to us, as we supposed (although the Senate disagreed with us) that until it was established what that message was, you had no business whatever with this respondent. You have decided otherwise. We have gone upon that theory. Now, you say, for the first time, we will try you on another thing, which you have never seen. What we want is, to consider whether we have not right under that. It may turn out that—

MR. CROWLEY: Can you tell by a consultation with your associate counsel what length of time you will require?

MR. SHAFER: We have not consulted upon that for the very reason that we feel as the respondent here would feel under like circumstances, that we might ask such a length of time that the Senate would regard it as trespassing upon their indulgence. We knew the superior wisdom of the Senate and its disposition to treat us fairly. We feel that we are to be treated with entire justice, and that we are here with the scales of justice evenly balanced. We are very much inclined to leave that matter to the Senate. We only ask that we be not driven with lightning speed to a trial under a pressure which is irresistible without giving us time to collect our thoughts. We have the greatest confidence in the fairness, the integrity and the wisdom of this tribunal. I was going on to say that if the Senate, after deciding they have jurisdiction, without deciding at the same time that the message is not essential to confer jurisdiction, will say that when we have seen that for the first time we shall proceed to trial; if they will go to the extent of that doctrine, we will know what course to pursue. But until the Senate is prepared to go to that extent, we submit that we should be regarded as here not upon the charges which were served upon us in March last, because whatever may be their theory, it is clear that we never saw the message until this morning. We have a right to know what our legal rights are under that message. It is a right—not a favor—which would be granted by the pettiest court in the land. They made a mistake in the prosecution, and they knew it. You have held that we have come here upon a paper which does not exist, and we have prepared ourselves in reference to it though it had no business upon the journal. Are we to blame for that? Are we to be punished for proving the truth of what we said? Is it to be said to this respondent, because, forsooth, we have the impudence and presumption to prove the truth, that he is to be denied what would be given him under other circumstances? There is no thirsting for blood in this matter, and yet from the manner in which the prosecution has insinuated that this request is for delay, you would think there was, just as if we are not anxious to get out of this terrible ordeal. It is not a pleasant scene for my client. There is nothing under heaven which he would not rather do than to be tortured in this manner. Are we to be told

that this request is for delay, to prolong this agony—this terrible suspense to him? No. It is made in the best possible faith and under a conviction of duty, and it would be a disgrace to my associate and myself if we did not insist upon it. If however the Senate insists upon an affidavit, we will produce it. We made the motion distinctly upon the ground that we were taken by surprise, that we were not prepared to go on with the defense. We are embarrassed in this particular: in the courts of law, when a decision is made by the judge, if it is in opposition to our views, it has been usual if an inquiry was made on the part of the counsel for the grounds of that decision, for the judge to tell him. We have no intimation here. There is nothing upon your record which shows. Although you have reserved the right of adjournment, which we asked and which you denied by denying our motion, you do not tell upon what conditions we can have the adjournment. I think it is due to the respondent that some Senator about the circle, or its President, should arise and tell us upon what conditions we can have an adjournment which we asked for and which you denied. Do not regard us here as in a cage anxious to escape, and to spell ont what you mean. We made a motion to adjourn, on the ground that we were taken by surprise, and we have not had an opportunity to prepare our defense. You deny it, but you still reserve our right to move to adjourn. What do you mean by it? We want to understaand for we have been kept in the dark long enough.

Mr. GIBSON: I distinctly asked the counsel how much time they desired when they were in before and when they made the motion. They declind to respond, but left it to the judgment of the Senate. When the question came up in the Senate it was undetermined. But it was deemed proper by some Senators to again ask the question, which was asked, and again they have declined to respond as to the length of time they desired.

Mr. SHAFER: I call for the reading of the resolution.

The clerk read the resolution in words as follows:

"*Resolved*, That the objections now made by the respondent be and the same are hereby overruled, and the question of an adjournment to the respondent be and the same is hereby reserved."

Mr. SHAFER: I am right. If the resolution had said that the question reserved was as to the length of time of the adjournment I should not have troubled myself to address the Senate at this

length. I supposed from the language of the resolution that you reserved the question whether we should have an adjournment at all.

Mr. GIBSON: Will the counsel inform the Senate what length of time will be necessary to enable them to prepare for this trial? The counsel have asked us to respond frankly. I ask the counsel to respond frankly. This Senate desires to know their wish, and to extend to them every reasonable accommodation. It must be easy for them to answer.

Mr. SHAFER: I am glad that the Senator has spoken with the frankness he has. I regret that the resolution was not more explicit. I submit whether I was not right in my supposition that the resolution does reserve the question as to whether we can have an adjournment at all. If it had stated that the question as to the length of time was reserved, we should not have had any such scene as this.

Mr. GIBSON: I have failed yet to obtain an answer.

Mr. SHAFER: I am going to consult with my associate and the respondent.

The PRESIDENT: The Senator from the third [Mr. H. C. Murphy] intimated that the question was in regard to the length of time of the adjournment.

Mr. SHAFER: When the Senate puts its decision in writing we must regard that as our guide. If a decision of the chair made orally had suggested that the length of time was the only consideration, we should have understood it. As it is we had to resort to the higher evidence of what was intended, the writing, and accept it until it was changed or modified in some form.

Mr. SMITH: [After consultation with his associate and the respondent.] In suggesting a time to suit our convenience I would state that I have personal engagements next week and the week after. We have agreed, (that is the respondent and my associate,) to fix upon any time between the fourth and the twenty-fourth of July, or between the thirteenth of August and the tenth of September.

Mr. Humphrey moved that the Senate be cleared for consultation, which was carried.

On the doors being re-opened the President announced that the Senate had adopted the following resolution:

"*Resolved*, That when the Senate adjourn to-day, it adjourn

to meet on the twenty-eigth day of August next at 11 o'clock, A. M."

MR. WILLIAMS: I would like to be informed whether any thing further is necessary in order to join issue in this case; whether under our rules the charges are to be read at the present time? If so I hope it may be done, in order that the formal parts of the trial shall be gone through with.

MR. CROWLEY: I move that in pursuance of the rule, the charges and answer in this proceeding be now read. If I understand the case rightly, the Governor transmitted his message with certain charges and specifications constituting the complaint in this case against the accused. That subsequent to that time, I think on the sixth day of March, the accused with his counsel and the counsel for the prosecution met the judiciary committee in the Senate library, when other charges were agreed upon and the evidence was to be confined to those charges in lieu of the charges transmitted by the Governor. This will be found upon page 64 of Senate document 48.

MR. SEDGWICK: I think there is no misunderstanding among the parties as to the issue to be tried.

MR. SHAFER: There is no dispute in reference to that. I think the Senators must see that for the very reason you granted a postponement you should not proceed further in this case. We asked for a postponement that we might see the precise grounds upon which we stood, and what we should do before the charges were read or any further proceedings taken. And I would suggest that the more appropriate time to read the charges would be when the Senate is in session for the purpose of a hearing. Besides we may have something to say before a reading of the charges is reached.

MR. WILLIAMS: I do not see any impropriety in this case to read the charges and the answer, to ascertain what the answer is. It has always been usual when courts proceed to the trial of any matter, to call upon the respondent for some answer in order that the court may understand what it is called upon to try. I think that should be done now; otherwise when we come together again we may ascertain that we have nothing whatever to try.

MR. H. C. MURPHY: I call the Senator from the 25th [Mr. WILLIAMS] to order. My point of order is that decisions on motions shall be had without debate unless the Senate be cleared for consultation.

THE PRESIDENT: The chair is of the opinion the point of order is well taken.

MR. GIBSON: I move that the reading of the charges and answer be suspended until the next meeting of the Senate.

MR. CROWLEY: I withdraw my motion.

The question was taken on the motion of MR. GIBSON which was decided in the affirmative.

MR. HUMPHREY moved that the Senate adjourn.

Which was carried.

FIFTH DAY.

ALBANY, *August* 28, 1866.

The Senate met pursuant to adjournment, the President, Hon. THOMAS G. ALVORD, in the chair.

The roll was called, and a quorum not being present,

Mr. H. C. MURPHY moved that a recess be taken until twelve o'clock, which was carried.

On the re-assembling of the Senate the clerk proceeded to call the roll, when the following Senators announced their presence:

Messrs. ANDREWS, BENNETT, COLLINS, C. G. CORNELL, FOLGER, GIBSON, GODARD, HUMPHREY, KLINE, LA BAU, LENT, LOW, H. C. MURPHY, T. MURPHY, PARSONS, SESSIONS, STANFORD, SUTHERLAND, WILBOR, WILLIAMS—20.

MR. SMITH: I have a list of witnesses, on the part of the respondent, that I would like to have subpœnaed. I suppose they must be subpœnaed by the Sergeant-at-Arms; and, as I see by calling of the roll that there is barely a quorum of the Senate present, and several Senators who have been here heretofore are not yet in attendance, I suggest that there be a further delay for them to arrive, to allow them to attend personally on the trial. I prefer that they be here during the entire proceedings.

THE PRESIDENT: Does the chair understand the counsel to make a motion to take a recess?

MR. SMITH: On our part, we would be gratified if that course were pursued, and a recess taken to such time as would be most likely to afford them an opportunity to get here.

THE PRESIDENT: Is any motion made on the part of the Senate in relation to the suggestion of the counsel?

MR. FOLGER: I stood between the counsel and did not hear the motion or the reasons for it.

MR. SMITH: I move the Senate take a recess to three o'clock. I suppose that, as counsel, we have a right to make the motion; and the reason that I suggest it is that there are some Senators who have been present during the entire proceedings so far, and who are not now in attendance, but who I suppose will be here; and, as there is barely a quorum present, I would like to have a recess to enable them to be present during the entire proceeding.

MR. FOLGER: I suppose that such a motion is not, ordinarily, in parliamentary bodies, debatable, but as it comes up as it does, I would like to ask the counsel a question before voting upon it. If it consorts with the views of the counsel for the defense, I would like to know what their purpose is as to the further action when we come together—whether they have resolved in their own minds to go forward with the trial or not—in other words, whether they are ready to hear witnesses called on the part of the prosecution.

MR. SMITH: We are desirous, when the trial shall be resumed, in the first place to present such considerations as we think bear on the question, perhaps only by making the suggestion in writing, and submitting it to the Senate without discussion, or perhaps discussing the proposition as to the jurisdiction of the Senate under the message which is supposed to have existed, and the contents of which have been declared by a resolution of the Senate. If it shall be held that the Senate have authority to proceed upon a paper of their own creation (it being conceded that the document communicated by the Governor to the Senate was destroyed), we expect to submit to the Senate the question as to which side is to proceed affirmatively in this matter. It is my judgment, and also that of my associates, that if it shall be decided that this message, or supposed message, is the document under which the Senate is to assume jurisdiction, and on which they are to act, it remains for us to proceed as far as we are able—and I think we shall be quite successful—to take the affirmative, and call our witnesses, and, as far as we can, prove the innocence of this man who is accused. If the Senate think it is proper to try a citizen upon such a document as this, we expect to be ready to go on and give our testimony to that end. It would be an anomalous proceed-

ing—something, probably, which has never occurred before in this State, in any tribunal; but if that message which has been declared by the Senate is valid in any respect, it must be in all its features; and it imposes on us the burden of proving our innocence, which I think we can do. But we desire first to raise the question as to whether there is authority under this last message, and second, if that is decided against us, as to the order of the proof, and then proceed with the proof as rapidly as we can. I perhaps ought to say, in addition, that the witnesses, as we understand, in this proceeding are to be subpœnaed, under the order of the Senate, by the Sergeant-at-Arms, and for that purpose I handed up the list of witnesses, supposing that the Senate would direct their subpœna. In saying what I have in reference to the witnesses, I do not wish it to be inferred that we have no witnesses here, for we have some. We have made some preparation in that regard. My first suggestion is in reference to the postponement. It is important that Senators who are to take part in the final decision should hear as much testimony as is possible, as no man can get an intelligent idea of the questions at issue unless he hears the whole of the proof. It is important, therefore, that all the Senators may be here, if possible, to listen to the balance of the proceedings.

THE PRESIDENT: The chair will inform the counsel that, under the rule adopted by the Senate, there is no necessity of the Senate taking action in reference to the subpœnaing of witnesses. The chair will order it to be done.

The question was then taken on the motion of the counsel for a recess, and it was declared lost.

MR. SHAFER: Mr. PRESIDENT—If we, on the part of the respondent, understand the precise attitude in which this case now stands, it is this: We, in the first instance, moved to dismiss the proceedings on the ground that there was a failure in the message of his Excellency the Governor, as it appeared upon the journal, to recommend his removal. That motion was denied. We then offered to show that the message, as it appeared on the journal, was not the message addressed and communicated to the Senate by his Excellency the Governor, and after opposition on the part of the prosecution, leave was given to the respondent to prove that fact. Proof was given, and the Senate adjudged that the allegation on the part of the respondent was true. At the same time, after the decision on the part of the Senate that it was so,

true, and without passing upon the question at all, whether the alteration so vitiated it as to deprive the Senate of jurisdiction, the Senate proceeded to declare what the original message was, and declared that the message as communicated to the Senate by the Governor was the one read from the clerk's desk on the 14th of February, 1866; and the Senate proceeded further to declare (without the question ever having been discussed at all, or presented; without any suggestion on the part of the counsel as to the illegality of the message), that by reason of the message as it was read on the 14th of February, at the clerk's desk, it had jurisdiction. The precise question we propose to present now, is this: By the message, as it appeared on the journal (I will not pretend to quote it literally) his Excellency recommended his removal, if the Senate shall be satisfied of his guilt. The message, as it is now declared to be, recommended his removal unless he proves his innocence. In other words for the first time, we allege, in the history of either civil or criminal jurisprudence, the respondent is adjudged by that message to be guilty until he proves to this body his innocence. The point we desire to present and the question we raise, is that the conclusive presumption, not only by universal law, but by constitutional law, is that every man is innocent until proved guilty, and that this message, in deciding the guilt of the respondent until he proves his innocence, is void of itself and confers no jurisdiction upon the body to which it is addressed. That is the precise question we now desire to present and therefore, without further argument on our part, unless my associate sees fit to address you, and I understand he is far from being well, which is one reason why he desired an adjournment to see whether he could proceed any further to-day. We submit the question.

THE PRESIDENT: The chair will decide in this case, at this time, that the judgment of the Senate has been that the past dilatory pleas which have been interposed by the respondent have been ruled out of order, and that the action of the Senate to-day claims that the parties shall proceed to trial upon the merits. That has been the deliberate judgment of the Senate as recorded in the journal, and any such motion on the part of the defense is, as the Senate has decided, now out of order.

MR. SHAFER: Where is that decision? I beg leave to inquire of the Senate?

THE PRESIDENT: The chair so decides, based upon the action

of the Senate. On the last objection interposed by the respondent, the Senate resolved "that the objections now made by the respondent be, and the same are thereby overruled, and that the question of an adjournment to the respondent be, and the same is hereby reserved."

Mr. SHAFER: Mr. PRESIDENT—

THE PRESIDENT: The chair does not wish to argue the case with the counsel. If the counsel desires to test the correctness of the decision, he can appeal to the Senate to determine.

Mr. SHAFER: I think there is a misapprehension on the part of the presiding officer, and of course I say it with great respect, as to the position which counsel and the Senate occupy towards each other and toward the respondent. Now, while the Senate in one respect is a legislative body, we claim in this instance, it is acting as a judicial body; that it is not engaged in the discharge of a legislative function or in the discharge of a judicial function conferred especially by the Constitution. It must be conceded by every one that you are not now engaged in performing any legislative act. In no sense of that term are you sitting here as legislators. You are sitting here simply as judges and as a court, as a judicial body. You have established certain rules which are to govern this body, and the respondent and his counsel. In what? In the performance of a legislative act? Certainly not. In the discharge of a duty imposed upon you by the Constitution of a judicial character, and having established those rules, the respondent having appeared before this body (in the technical character of a Senate to be sure, but really in the character of a court,) in person and by counsel, he must be governed by those rules, and he has the right in every instance, upon every question, to discuss not only the rules which have been adopted, but every proceeding which has been had, precisely as though he were in a court of justice. It is analogous to the Supreme Court, or any other court which has for its government and the government of counsel established rules. We find in every court, in the court of common pleas in the city of New York, the superior court, Supreme Court and Court of Appeals, certain definite, fixed, established rules for the government of attorneys and officers of the court, as well as the court, and whenever a question arises as to whether the practice of the party or the decision of the court is within the rules, of course counsel have the right to address the court upon the

subject of its interpretation of those rules, and hence I say, with great respect, that if there is a decision made by the presiding officer in opposition to the rights of the respondent, and in contravention of the rule, yet we have the right to address the Senate with respect to the erroneous rulings, else we are here without any rights. Hence, I desire to discuss the ruling of the president upon this subject, not by way of an appeal as a Senator would appeal, but by way of convincing the court, which has to pass upon it, that the decision of the presiding officer is wrong and to the prejudice of our rights. We have not been furnished with a copy of the resolution read by the President.

The Clerk proceeded to read the resolution found on page 140 of the record, as follows:

"*Resolved*, That the objections now made by the respondent be, and the same are hereby overruled, and that the question of an adjournment to the respondent be, and the same is hereby reserved."

Mr. SHAFER :—I understand the decision to be, that by reason of the adoption of that resolution we are precluded from making any motion which goes to the question of jurisdiction or which does not bear directly upon the merits in the case. In other words, that the prosecution are at liberty to proceed with the introduction of their evidence, if they have any, and that we are precluded from making any motion, or taking any steps whatever to prevent the introduction of evidence to stay further proceedings in the case. If that is the decision, certainly it cannot be sustained under the resolution which reads thus: "Resolved, That the objections now made by the respondent be, and the same are hereby overruled, and that the question of an adjournment to the respondent be, and the same is hereby reserved." What were those objections? They are to be found on page 135. We objected specially to the jurisdiction, for the reason that the Senate had no jurisdiction over the person of the respondent, inasmuch as no copy of the complaint had been served; that instead of the message now read, the message as it appears upon the printed journal was served upon him as a part of the complaint; second, that in accordance with the constitutional provision that he shall have an opportunity to be heard in his defense, a copy of the Executive and Senatorial proceedings must be served upon him, and he must be afforded a reasonable time to make his defense thereto; third, that the Senate had not acquired the right to proceed in this case

upon its subject matter as claimed by the Senate, because the defendant had not been served with a copy of the complaint as it was stated from the clerk's desk. Those were the objections then made, and the Senate by the adoption of the resolution referred to, by the president, "Resolved, That the objections now made by the respondent be, and the same are hereby overruled." Did the Senate resolve that all objections which the respondent and his counsel might thereafter make be overruled? Does the president mean to decide that the Senate, not only overruled the objection, which we then presented, but also decided to overrule any objection we might thereafter present? That would be an anomalous proceeding. It would be affixing to the character of that decision, I submit, an interpretation which this Senate is not willing to abide by. Did we then raise the question that by the message as it was declared to be, the Senate had no jurisdiction because it put the onus upon the respondent to prove his innocence? Did we present any such question as that? No such question as that was raised. I submit that the rule cannot be sustained predicated upon that resolution. If that is not so, there is not a single motion (and we have probably another on the part of the respondent), but that is adjudicated and passed upon and which this resolution never contemplated. In other words I submit that the Senate in June last did not intend to decide that an objection that was not then taken and which is taken now for the first time should be overruled and not listened to. If it so decided it was in some session not made public, and by some action of which we are entirely ignorant.

Mr. SMITH: I do not desire, Mr. President, to enter into a discussion of the question involved, but I am startled at this suggestion of the presiding officer, that it is the judgment of this Senate that this trial shall be proceeded with upon the merits, and that dilatory pleas shall no longer be heard, and especially when this Senate will remember that, until this day we have not had an opportunity to be heard upon this question, and when, if they reflect, not as a legislature, but as a court, sitting to decide a question which, so far as this defendant is concerned, is more sacred to him and more valuable to him than his life.

I say I am surprised, that under these circumstances, when counsel rise to object to a message they are met by the suggestion of the court that, without argument, without even hearing a statement of the points, the Senate has adjudged that no more dilatory

pleas shall be heard. You are a high court of the State; you sit here as a court; and every tribunal constituted by law, or created by the Constitution, that is to hear and determine the rights of an individual, either as to his liberty, property or life, is a court governed by all these general principles that regulate the administration of justice. And you are sitting here to try this man, in a case of this great magnitude, without the paper upon which jurisdiction is founded before you. If a man was indicted for stealing a chicken and the indictment was destroyed, jurisdiction would be gone, for a reason manifest, and which I need only allude to, and that is, that in these important matters the public interest and the dignity of the government, and its character and its duty require it to take care of every one of its citizens, even the humblest among them, that there be no uncertainty about its proceedings. Where an indictment is destroyed, the grand jury must find a new one. Where a message is destroyed, the power that made the first message exists, and if it thinks proper, it can make another, and there can be no doubt or uncertainty about it; and I think that if this Senate shall hold that they are to proceed and try this man upon this message, and hold that such a proceeding is valid and legal, it will fail to enjoy the approbation and approval of any one.

I do not desire to protract this proceeding by any further discussions of these questions. So far as this question is concerned, it has been pretty fully gone through with when discussing the other points before the Senate, though I am free to say, for one, that I never anticipated that the Senate, in passing upon the objection we had taken, did not content itself with merely over-ruling it, but took affirmative action, initiated of its volition, of its own physical power, and in which it proceeded to declare what the paper really was in its possession, which had been destroyed. Now, when we are brought before the Senate on that—a paper we have never seen, and of which no copy has ever been served upon us, and no copy ever existing—certainly, I think there could not be, with any propriety, a ruling that the mere stating of the objections is a dilatory plea, or one that the Senate could prejudge. If it is true that this man, a high judicial officer of this State, when brought before the Senate upon a document in which the executive officer says he never examined the case at all, and has formed no opinion on it, but recommends his removal unless he can prove his innocence, if under these circumstances it is out of order to raise

these objections, if they are ruled already upon, of course we must yield to the superior judgment of the Senate.

Mr. H. C. MURPHY: I do not think it is worth while to argue this point, and I move, therefore, that the counsel for the defense have leave to state any objections not previously stated before proceeding to the trial of this case.

The motion was submitted to the Senate, and was announced to be carried.

Mr. SHAFER: I have stated the objections which we have to the message, as it has been declared, and we pray the judgment of the Senate on those objections.

Mr. H. C. MURPHY: State them again succinctly, if you please.

Mr. SHAFER: We object to the jurisdiction of the Senate and to its authority to proceed, inasmuch as the message of the Governor which is essential to confer jurisdiction upon it is a nullity in deciding that the accused is guilty and in recommending his removal unless he proves his innocence. The conclusive presumption of law, constitutional and otherwise, is that he is innocent until proved guilty.

Mr. SEDGWICK: I ask that the objection be reduced to writing.

Mr. SHAFER submitted the following objections:

The respondent objects to the jurisdiction of the Senate to proceed in the trial of this cause under the message as it has declared it to have been read from the Clerk's desk on the 14th of February, on the ground,

First, that it recommends his removal from office unless he proves his innocence, thereby assuming the guilt of the respondent.

Second, the same is a nullity and is void.

Third, that no such message was ever transmitted to the Senate, nor is there any such message in existence.

Mr. GIBSON moved that the objection be not sustained, which was carried by the following vote:

AYES.—Messrs. Andrews, Bennett, Collins, Folger, Gibson, Godard, Humphrey, Kline, LaBau, Lent, Parsons, Sessions and Wilbor, 13.

NAYS.—Messrs. C. G. Cornell, H. C. Murphy, T. Murphy, Stanford and Sutherland, 5.

Mr. SHAFER: Under this decision of the Senate we insist that we have the affirmative, and that the respondent be at liberty to

introduce evidence in the first instance, and establish his innocence, in obedience to the recommendation of the Governor under this operative portion of the message: "I do, therefore, recommend that the said George W. Smith be removed from his said office, if in the judgment of the Senate, upon trial, he shall fail to disprove the charges which are made against him." We insist that that portion of the message which gives jurisdiction confers upon us the privilege of introducing our evidence first. In other words we propose to disprove these charges.

MR. SEDGWICK: I would remind the counsel upon the other side that the charges have not been yet read. I would be glad to hear what they are before we proceed to try them.

The Clerk then proceeded to read the charges and answer, as follows:

Charges preferred against the Hon. George W. Smith, County Judge of the county of Oneida, upon which his removal from office is demanded, in pursuance of article six, section eleven, of the Constitution of the State of New York:

1st. That the said George W. Smith being such judge as aforesaid, and being authorized by the laws of the State of New York to decide upon the claims of citizens of said county to exemption from service in the militia of said State, did, in numerous instances, draw up as attorney or counsel for the applicants for such exemption the necessary papers to secure such exemption, and did receive pay therefor, as such attorney and counsel, knowing that the several cases so prepared were to come before him for examination or decision thereon, and afterwards passing upon and deciding the same in his judicial capacity. This was done at different times and dates during the years 1862, 1863 and 1864, at the city of Utica, in said county of Oneida, the precise dates and names being unknown.

2d. That the said George W. Smith, being such judge as aforesaid, and having one Henry T. Utley as a law partner, he, the said Smith, being authorized by the laws of the State of New York to decide upon the claims of citizens of the said county of Oneida to exemption from service in the militia of said State, did suffer and permit the said Utley, as attorney and counsel for applicants for such exemption, to prepare the papers therefor, and to receive pay therefor, as such attorney and counsel, he being entitled to and receiving, as a partner of the said Utley, a share of such fees and charges, and knowing that the several cases so prepared by

the said Utley were to come before him for examination and decision thereon, and afterwards passing upon and deciding the same in his official capacity.

This done at Utica aforesaid, at different dates during the years 1862, 1863, 1864 and 1865, the precise dates and names being unknown.

3d. That the said George W. Smith, being such county judge as aforesaid, and as such, under the laws of this State, having the controling voice in the appointment of excise commissioners in the said county of Oneida, did, with a view to his own personal advantage and gain, procure the appointment of Aaron W. Reynolds, George F. Weaver and Samuel P. Lewis as such commissioners; and did afterwards, to wit, in or about the month of February, A. D. 1865, with the same intent, procure from the commissioners so appointed, his own appointment, in writing, as the prosecuting attorney of the said board of commissioners, the same being a valuable office and appointment; that one Samuel J. Barrows, at and before such appointment of said Smith, held the said office under the appointment of the said board, and had discharged the duties thereof in a satisfactory manner; that the appointment of the said Smith was not published, but was kept secret; that afterwards and on or about the 22d day of March, A. D. 1865, the said Smith sold the said office and appointment to the said Barrows for the sum of $500, which was paid by the said Barrows and received by the said Smith therefor, and such appointment in writing given up to said Barrows and destroyed; that at the time of the payment of said money as aforesaid, and as a part of the same transaction, it was corruptly proposed and agreed by the said Smith that he would continue in office and reappoint one of the said commissioners, viz: the said Weaver, for the purpose of securing the said office to the said Barrows; that it was understood by and between the said parties, that by the sale and giving up of said office and appointment by the said Smith, the said Barrows would continue in said office and employment, and could secure his own reappointment thereto, which has been done, and said Barrows did continue in said office, and has hitherto and still does so continue and has been reappointed thereto. And it was further understood that said Smith was not thereafter to interfere with said Barrows in said office, but was to aid in continuing him therein, and securing the same to him.

4th. That the said George W. Smith, being such county judge, as aforesaid, and as such under the laws of this State, having the controling voice in the appointment of excise commissioners in the said county of Oneida, did, with a view to his own personal advantage and gain, procure the appointment of Aaron W. Reynolds, George T. Weaver and Samuel P. Lewis as such commissioners; and did, afterwards, to wit, in or about the month of February, A. D. 1865, with the same intent procure from the commissioners, so appointed, his own appointment, in writing, as the prosecuting attorney of the said board of commissioners, the same being a valuable office and appointment. That the said Smith, just prior to his said appointment, and with a view to his own gain and advantage, did propose to one James G. French, an attorney and counselor-at-law, residing at Utica in said county, and to one William B. Taylor, as a friend of said French, that he would procure the said appointment for him, the said French, or would give him his influence as county judge in that behalf, provided and on condition that the said French would go into partnership with the said Smith in that business or the business pertaining to that office and appointment, and would accept for his services one-third of the emoluments or profits of the same and give to the said county judge two-thirds of such profits and emoluments, which proposition was rejected by said French. And further, that after the said county judge had received the said office or appointment for himself, he made substantially the same proposition to the said Samuel J. Barrows, before the sale of said office to him as in the last preceding charge specified and set forth.

5th. That at and before the time of the transaction, hereinafter stated and charged, one Henry T. Utley was the law partner of the said George W. Smith. That, on or about the fifth day of January, A. D. 1865, one Charles E. Norton was confined in the county jail of Oneida county upon a charge of grand larceny. That the said Smith, being the friend of one Major John A. Haddock, then the Acting Assistant Provost Marshal General of the Western District of New York, and, having authority in the premises, applied to and used his influence with the said Haddock to procure, and did procure from him a special order that the said Norton should be mustered into the military service of the United States, and that the bounty to which said Norton would become entitled on such muster in said county of Oneida, being the sum of six hundred dollars or over, should be paid to and retained by

the said Utley, the law partner of said Smith. That upon procuring said order, and upon the application of the said Utley, the said county judge let the said Norton to bail—the said Utley becoming his surety, and thereupon said Norton was mustered into the service of the United States, and his bounty, amounting to six hundred dollars, was paid to the said Utley. That it was understood and agreed between the parties to this transaction that such bail bond was not to be enforced against said Utley; and that, in pursuance of such understanding, the said county judge retained the same in his own possession and control, and did not file the same in the clerk's office of said county, nor deliver the same to the district attorney of said county, as by law he was required.

6th. That some time prior to the month of January, A. D. 1865, one John A. Haddock had been appointed to, and then held the office of Acting Assistant Provost Marshal General of the Western Division of the State of New York, with the rank of Major, and having his headquarters established at Elmira. That the said Haddock had long been the friend of and intimate with the said George W. Smith, and advised him of his expected appointment, and after it was obtained had a long interview with him at Utica in reference thereto. That at the same time one Aaron Richardson was a notorious substitute and bounty broker. That one John D. Collins, residing at Utica, and having a desk in the office of the said county judge then and for a long time previous thereto, was employed by the said Richardson as his clerk, and to assist him in his aforesaid business. That with a view to the mutual and personal pecuniary, but corrupt and unlawful gain and advantage of the said Haddock, Richardson, and Smith, and for the purpose of securing peculiar and special facilities and unfair and unlawful advantages to the said Richardson in his said business in Oneida county and elsewhere in the said Western Division, a corrupt and unlawful arrangement and combination was entered into by and between the said George W. Smith and the said Richardson and the said Haddock, acting upon the solicitation and under the personal and official influence of said Smith, by which such peculiar and special facilities and improper and unlawful advantages were secured to said Richardson in his said business of recruiting and bounty brokerage. That among other things the said Smith did, on or about the 8th or 9th day of January, A. D. 1865, at the request and on the behalf of the said Richardson, go to Elmira aforesaid, and did procure from the said

Haddock two several letters to Lieutenant Colonel D.W. C. Poole, then Acting Provost Marshal at Utica, in the words and figures following, viz:

HEADQUARTERS A. A. PROV. MARSHAL GEN. & SUPT. OF VOL. RECRUITING SERVICE WEST. DIV. S. OF N. Y., ELMIRA, N. Y., *January* 9, 1865.

Lt. Colonel D.W. C. POOLE, *Acting Prov. Marshal, Utica, N.Y.:*

Colonel—I have the honor to inform you that I have acquaintance with Mr. J. D. Collins, of Utica, and know him to be a fine clerk. You, unless good reasons are apparent to the contrary, treat enlistment papers made out under his direction and in his office, during the hurry of recruiting, as though made out by one of your enlisting clerks—taking care, however, to see that such papers are made out in conformity to law and regulations.

Very respectfully, your ob't servant,

JNO. A. HADDOCK,
Maj. and A. A. P. M. G.

HEADQUARTERS A. A. PROV. MARSHAL GEN. & SUPT. OF VOL. RECRUITING SERVICE WEST DIV. S. OF N. Y., ELMIRA, N. Y., *January* 10, 1865.

Lt. Colonel POOLE, *Acting Provost Marshal, Utica, N. Y.:*

Colonel—The true construction of Order No. 23, Department of the East, dated March 25th, 1864, and promulgated from this office, with an intimation that the spirit of that order would govern me in passing upon cases arising in this Division, will be held by me to be that if recruits or substitutes are fully informed, by the Provost Marshal, of their rights as to local and government bounties, they may thereafter assign to any person such portion of their local bounty as they may elect, not exceeding five-eighths thereof. The Provost Marshal should take pains to inquire fully into bargains made with recruits and substitutes, and hold both parties to a strict performance of their agreements, not forgetting that recruiting agents have rights that should be respected as well as recruits or substitutes.

I am, Colonel, very respectfully,
Your obedient servant,
(Signed) JNO. A. HADDOCK,
Major and A. A. P. M. G. W. Div. of N. Y.

That in further pursuance of such scheme and arrangement said Richardson went himself to Elmira, starting on the same day with

Smith, and passed him on the way, reaching Elmira in advance of Smith and advising said Haddock that he was coming and the purpose of his visit. That Haddock on that occasion gave to Richardson several letters to various provost marshals in his division, commending him to their confidence. That afterwards, and in pursuance of such corrupt scheme and arrangement, the said Richardson, at Canandaigua, on or about the 21st day of January, A. D. 1865, presented to said Haddock a valuable horse, cutter, harness and robes of the value of $500 and upwards. That afterwards, and on or about the 25th day of the same month, he presented to said Haddock $2,000 in cash. That in further performance of said corrupt scheme, the said Haddock sent to the said Richardson at Utica advice by telegraph, as follows: On January 24th: "She will be there to-morrow; watch for her." On the same day: "It stands at 2,088." On January 25th: "She was sent to you yesterday. Has she come? Do you want another one for the others? I wrote you last night." That these telegrams were intended to advise said Richardson of the quota of the 21st congressional district, being said county of Oneida. That afterwards, and on the 30th day of January, A. D. 1865, the said Haddock gave to said Richardson a paper showing the surplus of the several sub-districts of said district, as shown by the report of quotas and credits to the 31st day of December, 1864. That at the same time the said Haddock gave to said Richardson a letter of that date to Captain Crandall, who had succeeded said Colonel Poole as provost marshal of said district. That said paper and said letter are in the words and figures following, viz:

"Surplus of sub-districts in the 21st congressional district, as shown by report of quotas and credits, dated December 31st, 1864:

Annsville	9
Augusta	1
Ava	3
Boonville	24
Bridgewater	9
Camden	2
Deerfield	4
Florence	2
Floyd	1
Kirkland	3
Lee	3
Marshall	5
New Hartford	2

Paris	2
Remsen	4
Rome	12
Steuben	1
Trenton	8
Utica, 1st ward	4
Utica, 3d ward	18
Utica, 4th ward	5
Utica, 5th ward	7
Utica, 6th ward	24
Utica, 7th ward	8
Vernon	1
Western	3
Westmoreland	1
Whitestown	20
	193
Oneida county at large	17
	210
Deficiency	4
	206

"ELMIRA, N. Y.; *Jan.* 30, 1865.

Captain CRANDALL, *Provost Marshal*, Utica, N. Y.:

Captain—From my acquaintance with Mr. Aaron Richardson, of Albany, I am well convinced that he is a man of integrity, and that he will do as he agrees. Such men are very valuable in putting in men, as his acquaintance is very extensive and his resources many. I hope you will grant him all reasonable indulgence. He is a man of property, and can back up his statements.

Very respectfully, your obedient servant,

(Signed) JOHN A. HADDOCK,

Major and A. A. P. M. G."

That at some time after the appointment of said Crandall as Provost Marshal at Utica, the said Richardson had deposited with him a large amount, to wit: twenty thousand dollars of the bonds of Oneida county as security either that the men enlisted by him would not desert, or that they should be credited to the said county or district; that these facts and others connected with the transactions between the said Haddock and the said Richardson, were communicated to and well known to the said Smith, who was, during this time, in correspondence with said Haddock, and in fre-

quent personal communication with the said Richardson after his return from Elmira, and during the months of January and February, 1865; that afterwards, and on or about the 3d day of March, A. D. 1865, the said Smith again went to Elmira and saw Haddock, and became fully acquainted with all his transactions with the said Richardson, as hereinbefore set forth; that on that occasion he tried to procure from the said Haddock an order for the surrender of the said $20,000 of bonds so deposited as aforesaid by the said Richardson with said Haddock, and also bonds of other parties deposited in like manner and for the same purpose; that said Haddock on that occasion gave to his clerk, one S. Floyd Hoard, an order upon said Crandall for the delivery to him of the said bonds, and the said Hoard and said Smith on the evening of that day went from Elmira to Rochester, where the said Richardson had proposed to meet said Haddock at that time; that the said Smith and the said Hoard met Richardson the next morning, and that said Smith then endeavored to procure from the said Richardson the telegrams, letters and papers hereinbefore stated, and others tending to show the corrupt arrangement between said Haddock and said Richardson in relation to recruiting, and among other corrupt inducements thereto, assured him that said $20,000 of bonds for which said Hoard had an order, would, if surrendered by said Crandall, be given up by said Haddock to Richardson; that immediately after his return to Utica the said Smith, on the fifth or sixth day of March, at the request of said Richardson, returned to Elmira; that on this occasion said Smith took a written memorandum prepared by said Collins, the clerk of said Richardson, containing several requests, to be presented to said Haddock on behalf of said Richardson, to wit (substantially):

1. To grant furloughs to three men put in by Richardson (and who were deserters.)

2. To send a guard to Utica.

3. To allow said Crandall to muster men for other districts.

4. To direct Crandall to give up the said $20,000 bonds to Richardson.

5. To have certain credits allowed to Richardson.

That before going to Elmira on this occasion, the said Smith received such memorandum in writing, and took it with him; that he there arranged at Elmira for a personal interview between the said Haddock and Richardson at some future day, which was afterwards arranged by telegraph by and between said Smith and

Richardson, and took place at the Osborne House in Rochester on the tenth day of March thereafter; that the said Smith was there and occupied the same room with said Haddock; that on this occasion it was arranged between the said Haddock and Richardson that (among other things) said Richardson, in consideration of favors from said Haddock, was to send him by said Smith the sum of $5,000.

That said Smith and Richardson returned to Utica, and soon thereafter, to wit: on the 13th day of March, the said Richardson, by the consent and with the knowledge of said Smith, caused a telegram to be sent from Rome to said Haddock, requesting him to order Major Beadle, then provost marshal at Utica, to muster men for Oswego, to which the following answer was returned, viz:

"ELMIRA, *March* 10, 1865.

GEORGE W. SMITH, *County Judge:*

I have given directions as requested by you.

JNO. A. HADDOCK."

That afterwards, and on or about the 16th day of March, 1865, the said Richardson gave to said Smith, in his office, the sum of $5,000, in seven-thirty notes, to take to Haddock pursuant to the aforesaid arrangement at Rochester. That said Smith saw Haddock on the 18th day of March, and exhibited the said bonds to him, that he had at the same time the aforesaid memorandum given him by said Collins at Utica. Afterwards another meeting was arranged by telegraph, and was had at Canandaigua between said Smith and Haddock on said Richardson's business. Haddock had declined to receive the $5,000, and Smith had returned the money to Richardson.

The said Haddock had, besides the said telegrams and papers hereinbefore particularly referred to and set forth, sent to said Richardson various other letters and telegrams, tending to implicate him and furnish evidence of his misconduct in his said office, and to subject him to military censure and punishment. That the said Haddock desired to recover and suppress such papers and evidence. That he procured the said Smith to endeavor to recover the said papers from said Richardson. That said Smith at the time when he was pretending to act as the friend and counsel of said Richardson, was likewise acting for said Haddock, and on his retainer and employment in endeavoring to procure from said Richardson such papers with a view to suppress such evidence.

That for the services in behalf of said Richardson hereinbefore set forth, and in pursuance of the aforesaid scheme and arrangement, the said Smith demanded of the said Richardson the sum of two thousand dollars.

7th. That the said George W. Smith did, while holding said office at Utica in the said county, on or about the 16th day of March, 1865, receive from one Aaron Richardson, a person then engaged in the business of bounty broker, the sum of five thousand dollars in seven-thirty government notes, upon the understanding and for the purpose of offering the same to the said John A. Haddock, then acting Assistant Provost-Marshal General of the Western Division of New York, as a bribe for favors granted or to be granted to said Richardson, and did knowingly and corruptly bear and offer the said bribe to the said Haddock for the purpose aforesaid.

8th. That the said George W. Smith, being such county judge as aforesaid, did heretofore, to wit, on the 10th day of March, 1865, and at other times, at Utica aforesaid, and also at Rochester, endeavor to procure from the said Aaron Richardson certain letters and telegrams, addressed and sent to him, and certain other paper writings delivered to him by the said John A. Haddock, which papers tended to prove that the said Haddock had been guilty of misconduct and maladministration in his office of Acting Assistant Provost-Marshal General of the Western Division of New York, with a view to suppress the evidence contained in said papers, and to screen said Haddock from just censure and punishment, he, the said Smith, well knowing the character and general contents of said papers, and the purposes for which their return was sought.

9th. That the said George W. Smith, being county judge as aforesaid, habitually neglected the duties of said office, and was unreasonably absent from his office, without any sufficient reason or excuse, and that he was engaged, either for himself or others, in the business of furnishing recruits and substitutes, and bounty brokerage, a business inconsistent with the proper discharge of the duties of his place, and to the great loss and detriment of persons having business before him as county judge, or in the county court of said county; that such neglect has extended through the whole of his term as county judge.

All which it is humbly submitted is in derogation of the duties of the said Smith, as county judge as aforesaid, and tends to bring

the said office into public contempt and disgrace, and is improper and unlawful and of manifest public injury, and authorizes and requires the removal of the said Smith from his aforesaid office, pursuant to the aforesaid provisions of the Constitution of this State.

ANSWER.

IN THE SENATE OF THE STATE OF NEW YORK:

In the matter of charges preferred, &c., against George W. Smith, County Judge of Oneida county.

The answer of George W. Smith, County Judge of Oneida county, to the charges preferred against him, shows to this honorable Senate:

This respondent in his proper person, comes before this honorable Senate, and protesting that there is no high crime, misdemeanor, or any offense whatever, particularly or otherwise alleged in the charges aforesaid, to which he is or can be bound by law to make answer unto, and saving to himself, now and at all times hereafter, all benefit of exception to the insufficiency of the said charges, and each of them, and to the defects therein appearing as point of law or otherwise, and also saving to himself, now and at all times hereafter, all benefit of exception to the jurisdiction of this honorable Senate to try and determine said charges, and protesting also that he ought not to be injured in any manner by any words, or by any want of form in this his answer, says that he denies each and every allegation in the said charges contained, and the view, design and intention therein charged, and avers that all he did in the premises was done in the faithful and conscientious discharge of his official duty, and his duty as an attorney at law, as he believed and as he still confidently believes, warranted and supported by the Constitution and laws of the land; and therefore this respondent, for a plea to said charges, saith that he is not guilty as in and by said charges it is alleged.

GEO. W. SMITH.

Mr. SEDGWICK: That raises a question as to the due and orderly proceeding of this trial. I submit it is a full and perfect answer to the proposition on the part of the respondent's counsel to say that he is not tried upon the message of the Governor. It has nothing to do with his trial. He is tried upon the charges which have been read; and the Constitution makes it the duty of

the Senate to try the charges which are preferred against him. To these he has pleaded "not guilty." After protesting against the jurisdiction of the Senate and the informality of the charges, he plead not guilty to each and every one of these charges. If that is the subject matter to be tried, I submit that the affirmative is with the people—with the complainants; and it seems to me that disposes of the question raised by the other side. The counsel, with great ingenuity, has sought to bring before the Senate the message of the Governor, of which he now complains. I am not going to discuss these questions. All the Governor has to do, under the Constitution, is to recommend the removal of the officer. That the Senate decides he has done, in their decision on the very first motion proposed by the other side,—that the Governor had recommended his removal. Whether the Governor examined the question, whether he formed an opinion upon them, whether he recommended that he be tried upon the presumption of innocence, or upon the presumption that he was guilty, is mere surplusage in the message, having nothing to do with the proceeding before the Senate; because they are required to try the charges that are preferred against the party, and they are required by the Constitution to see that the respondent is furnished with a copy of those charges. He has been furnished with them; he has answered them; and the issue that is to be tried, under the rules which you have laid down for the government of this trial, is, is he guilty or not guilty of either of these charges. The rules of the Senate require that you should answer upon that. Now the proper conduct of this prosecution is a very plain matter, it seems to me, and cannot be obscured by any ingenuity upon the other side. We are to try these charges as we are any other charges preferred against persons recommended for removal from office, under this section of the Constitution. You sit here as a Senate to try these charges, and to ascertain and say whether you are warranted in concurring with the recommendation of the Governor. You have nothing to do with the form of the Governor's message. If he has recommended the removal, your jurisdiction is complete. The responsibility is upon the Senate. They are to try the person recommended for removal upon the charges preferred against him; and there is no person in this Senate, and no person who hears me, having ever so little acquaintance with the ordinary forms of proceedings of this character, in any court where a person is accused,

but knows that the proof is to come from those who aver the guilt of the party. He is to be proved guilty of the charges. It is the province of the prosecution to give evidence of his guilt; and it is for the accused either to disprove the charges, if he can, or if he so choose, to rest upon the evidence we give, as not sufficient.

Mr. SMITH: I think the learned counsel is mistaken in supposing that any ingenuity has been employed to render obscure any of the points involved in determining what shall be the order of proceeding in this trial. I am free to admit that considerable time—more than is usual in the trial of issues—has been occupied in discussing and procuring an adjudication as to how this case gets here, and by what authority the Senate proceeds; and after the ruling of the Senate I hoped these questions were settled. But it seems the message is to undergo still further change, before the Senate is ready to proceed in the orderly conduct of the trial, in ascertaining the facts of the case. I admit what the counsel has said is correct, that the ordinary course is for the party making the charges, to give evidence, and that the opposite party shall reply, to disprove them; but that does not relieve the gentleman from the difficulty in which he finds himself at every step involved by this most extraordinary State paper. It is proposed now to assume jurisdiction, and regulate the order of proceeding for this trial, upon part of this message, and reject the other part as surplusage, if it is surplusage. There is only one sentence: "I do therefore recommend that the said George W. Smith be removed from his said office, if in the judgment of the Senate, upon trial, he shall fail to disprove the charges which are made against him." Reject as surplusage a part of the sentence! There is such a rule, in pleading, as justifies the court in rejecting, as surplusage, immaterial allegations in the pleadings; but to say you can reject one part of this sentence and retain the balance, would be a worse mutilation of the message than that which has already been proved to have transpired. I admit that the question, as the counsel has said, is upon those charges. I insist the trial is upon the recommendation of the Governor, and the recommendation is that he shall be removed, if he fail to disprove the charges. I insist you must take the whole sentence. If it gives jurisdiction at all, then every part of it must be respected and observed; and the only course under this recommendation is to enable the party to proceed and disprove the charges made against him. I am aware, for it has been frequently suggested since the last sitting

of the court, that it did not matter; that if there was any recommendation or paper sent, then that gave jurisdiction. But I think that is a most absurd argument. This message must be taken together. It is either all good, or it is utterly void. It is either a legal and proper recommendation, or it is utterly good for nothing. To say that the Governor may recommend a removal, upon a condition, and that is such a recommendation as gives jurisdiction to have a legal trial, is an absurdity. Suppose the Governor had recommended that he be removed if he fail to bring two witnesses to establish his innocence; or that he be removed if he fail to bring the expression of the people of Oneida, showing that a majority were in favor of his retaining his office; or that there be attached any other condition, can any one say that is a recommendation, under the Constitution, for removal? The recommendation is plain, is good as it stands, and every word of it is material, or else it is all utterly void. It is no recommendation at all unless every word of it is legal and proper. "If, in the judgment of the Senate, upon trial, he shall fail to disprove the charges which are made against him." The charges have been read. Now, under this conditional recommendation, we propose to comply with the condition. The gentleman on the other side says, though the recommendation is conditional, we will reject these words which create the condition and treat it as an absolute recommendation. In other words, by the act of the Senate, they propose to strike out the most material and important words in the recommendation. The counsel says that we have been struggling to get this message, that we now complain of, before the Senate. We have been struggling to ascertain what the message really was, and that having been declared by the Senate, we propose to go on under its direction, to do exactly what is required by the condition of the recommendation to prove our innocence.

The question on the motion of counsel for the respondent, that they be permitted to have the affirmative, was submitted to the Senate and declared to be lost.

On motion, the Senate took a recess to four o'clock.

AFTERNOON SESSION.

The Senate re-assembled at four o'clock, and the hearing was proceeded with.

THE PRESIDENT: It is evident to the chair that there is no quorum present, what is the pleasure of the Senate?

MR. SHAFER: I would like to inquire if it is in order for the counsel for the respondent to make a motion?

THE PRESIDENT: It is the opinion of the chair, the counsel for the respondent cannot make a motion, only a statement. It is competent for the Senate to take steps to cause the attendance of absent Senators, who are in the city, if they so desire.

MR. KLINE: I move that the Assistant Sergeant-at-Arms be directed to have the absent Senators brought into the Senate.

THE PRESIDENT: The chair is informed that the Assistant Sergeant-at-Arms is gone away, serving subpœnas in this case; the chair will send his own messenger.

MR. KLINE: I move that the Senate now adjourn until ten o'clock to-morrow morning.

MR. H. C. MURPHY: I would like to know from the counsel, how long this case is likely to take, in examining the testimony; in the first place how long on the part of the complainant?

MR. SEDGWICK: We think we can close the complainant's testimony this afternoon and to-morrow morning.

MR. H. C. MURPHY: Can the counsel for the respondent say, how long it will take upon their side?

MR. SHAFER: It is difficult for us to form a definite opinion, as it depends entirely upon the range of proof of the prosecution. We can conceive a line of proof that might be indulged in on the part of the prosecution, that would take us several days or a week to answer; and we can see they may resort to a line of proof which will take us but a few days. We cannot see our way clearly, short of two or three days, as far as our proof is concerned, and we can see how it may take much longer.

MR. FOLGER: Is it in order to move to amend the motion to adjourn? If it is in order, I move to amend, to take a recess until 5 o'clock.

THE PRESIDENT: It is the opinion of the Chair, a motion to adjourn is not amendable.

The question was then put upon the motion to adjourn, and the motion was declared to be lost.

MR. FOLGER: I now move that the Senate take a recess until 5 o'clock.

The question was put and the motion declared to be lost.

MR. KLINE: I understand there is hardly a quorum in the city, and not likely to be to-night; therefore, instead of waiting here, I renew the motion to adjourn until to-morrow morning at 10 o'clock.

The yeas and nays were demanded, and the motion was lost.

YEAS.—Mr. Collins, Mr. Kline, 2.

NAYS.—Mr. Bennett, Mr. Campbell, Mr. C. G. Cornell, Mr. Gibson, Mr. Godard, Mr. Humphrey, Mr. La Bau, Mr. Lent, Mr. H. C. Murphy, Mr. Parsons, Mr. Sessions, Mr. Wilbor, 12.

MR. COLLINS: I move that the Senate adjourn until to-morrow morning at 10 o'clock.

The question was put and the motion declared to be lost.

MR. COLLINS: We are all the time growing less, and I do not see the necessity of staying here. The Senator from the 15th [Mr. KLINE] has just gone home and others will go.

THE PRESIDENT: The Chair would inform the Senate that he has been informed that a portion of the Senators who were here this morning have gone to Saratoga, with the intention of returning upon the morning train, so as to be here in time for to-morrow's proceedings. The Chair sent a messenger to the Delavan House, but he was unable to find a single Senator.

MR. COLLINS: I now renew the motion that the Senate adjourn until to-morrow morning at 10 o'clock.

The yeas and nays were demanded, and the motion was carried.

YEAS.—Mr. Bennett, Mr. Collins, Mr. C. G. Cornell, Mr. Folger, Mr. Gibson, Mr. La Bau, Mr. H. C. Murphy, Mr. Parsons, Mr. Sessions, Mr. Stanford, Mr. Wilbor, 11.

NAYS.—Mr. Campbell, Mr. Humphrey, Mr. Lent, 3.

SIXTH DAY.

ALBANY, *August* 29, 1866.

The Senate met pursuant to adjournment—the President, Hon. THOMAS G, ALVORD, in the chair.

The journal of the previous day was read and approved.

A quorum being present, the proceedings were resumed.

THE PRESIDENT: Under the decision of the Senate, the case is with the prosecution.

MR. SHAFER: We ask the prosecution to suspend for a moment.

MR. SMITH: Mr. PRESIDENT—I feel it is due to my client, that some considerations should be presented in view of the further action of the Senate upon this trial. He is entitled, by the fundamental law, to a trial by the Senate; that would seem to imply that he should have a reasonably fair attendance of Senators. If there should be a full attendance; if all the Senators were present, it would require at least seventeen votes to convict him; if he should be tried by a bare quorum, half that may convict him. This does not seem to me to be giving him that kind of a trial which the law entitles him to.

There is another consideration which all the Senators, I know, will appreciate; that is, that in a trial of a case like this there should be some means—and it is due to Judge Smith that some way should be provided, if possible, to secure the prompt attendance and attention of the Senators who are to adjudge this case upon the final result. We have gone far enough already to see that, owing to various circumstances which all of you understand as well as I, there is a difficulty in securing a regular attendance of those Senators who may expect to take part in the final adjudication of this case. The little experience we have already had has shown that the attendance is not full; and, on the part of those who have been present, it is not entirely prompt. I think I am justified in saying, from what I know of the situation and personal conveniences of some of the members of this court, that they do not intend to remain for any length of time in attendance. Personal and private engagements overcome their attention to the public interests, and call their attention elsewhere. I think, on

the part of the Senate, it is due to this man that some measures should be taken or some arrangements should be made, if possible, to secure a prompt and reasonably full attendance of the Senate, and that, in a trial of the great importance that this is to the respondent, and the public interests that are involved, is due to the State and to the defendant alike. There is another consideration, sir, I think it proper to submit. I understand—though I am not quite certain of that—that the prosecution rely in the main in making out some of the leading accusations against this respondent (relating not so much to malversation in office as to his deportment as an individual, and his manner of carrying on private transactions), upon the proof contained in certain depositions that were taken in a case to which this respondent was not a party, and over which he had no sort of control. As you must see, where counsel are interested in putting him in a position prejudicial to his character as a man, to his credibility as a witness, they would use their ingenuity and skill in drawing out from him as far as possible such statements which, unexplained, might seem very decidedly to tend to prove what they have charged against him. If that course is to be adopted on the trial, unlike a witness put upon the stand and subject to a cross-examination, so that the testimony against him on the cross-examination would devolop an explanation, the case for the prosecution would stand, so far as would appear, upon the reports of this outside proceeding, to which I have referred, and the explanation of the respondent would not accompany it, and could not be developed until the respondent presented the case on his part. This is important, I think, in this point of view. One of the Senators inquired yesterday in relation to the extent of time this trial would probably occupy. The court are in this situation, and many of its members, he thought, would not be inclined to continue sitting at this season of the year later than the present week. Some public exercises are announced to take place here to-morrow, which will, perhaps, interfere with the attendance of all the Senators during a portion of the day. As to-day is Wednesday, it does not leave very much time this week. Now, I suggest this last proposition with the view of ascertaining from this court whether it will be able to remain in session and conclude this trial at this time, otherwise the evidence on the part of the prosecution, unaccompanied with the explanation elicited by the cross-examination, will be published, and members of the court

will have it, and it will go out to the public, and, I think, will be unfair and prejudicial to this respondent. I think when the trial is entered upon we should be in a condition to go through with and complete it. Though there is some difference of opinion upon our part upon this subject, I suggest these three propositions: First, the importance of securing in some way a reasonably full attendance of the Senate. Second, that that attendance be secured so that the members of the court are all promptly present to hear the proceedings. Third, if the trial proceed at this time it proceed until its termination without recess for any length of time. I think these considerations are important to my client; and for the purpose of presenting the question, and getting the views of the court upon the subject, although I do it not with entire unanimity among ourselves as to what is best, I move that the Senate adjourn until the first day of its next regular session. I make this motion more unhesitatingly, so far as my personal responsibility is concerned, from the consideration that this would promote private convenience and abridge public expense. During the early part of the sessions of the Senate, I believe the general experience has shown that its members are not very much oppressed with legislative business; and I believe that whilst all its members and its officers are here transacting legislation they can hear and dispose of this trial without materially trenching upon the time they would desire to devote to the legislative interests of the State. This, I think, would promote the convenience of all, and be a matter of public economy. There is another consideration about it that is obvious to every one, I suppose; the season of the year, as it turns out, is one peculiarly inconvenient for many parties who are attending here as counsel and otherwise. It is a time when our courts are about getting ready for the fall sessions. It would be more convenient, at least for myself, to attend at the beginning of the regular session of the Senate than at this time. These are the considerations for which I move an adjournment of the Senate. I make the motion for the purpose of drawing out an expression of the opinion of the Senate. I hope the motion will not be acted upon until such an expression of the opinion of the different members is had.

Mr. WILLIAMS: If there should be a motion to adjourn, I would inquire if that would render an immediate adjournment necessary. I think the motion should be that when the Senate adjourns, they adjourn to meet at the time referred to.

MR. SMITH: I am indifferent about that; but I really hope there will be some expression as to whether we can go through and conclude this case now. On our part, we are ready and anxious to go through with it at the present time.

THE PRESIDENT: The chair understands the proposition of the counsel for the accused to be that the trial of this case be adjourned.

MR. SHAFER: I don't think I can add anything to the suggestions made by my associate; but I deem it proper to say that we think, on the part of the respondent—and in this respect there is entire unanimity—(and the fact will be recognized from what we have already experienced), from the information we have personally from Senators, that if they continue the sitting of this Senate for the purpose of hearing this case, it will be with a bare quorum. That seems to be our difficulty; and we feel, as has been properly said by my associate, that we are entitled by the Constitution not only to a proper and full attendance of Senators upon this occasion, but if the Senators who are here in the discharge of their official duties find their associates are not here, that interests, either public or private, require their attendance elsewhere, it is fair to suppose that a man listening to the evidence of to-day might go away to-morrow; and those who have not heard all the evidence could not attempt to pass judgment upon the respondent. This is the view in which we present the motion. Those who are here have done their duty. They have discharged the obligations they owed to the public; but they find their associates are not here, and hence there is not the full and prompt attendance which is due to the administration of justice in this case. We are anxious that this case shall be disposed of; at the same time we are anxious that it shall be disposed of not only according to the forms of law, but according to the spirit of the Constitution. What would be said of the judgment of the Senate in this case, if it should remove this respondent with a mere quorum present, and by the vote of a bare majority, to wit, of nine Senators out of thirty-two? We cannot shut our eyes to experience. Yesterday morning you waited from eleven o'clock till twelve for a quorum. Yesterday afternoon you waited from four to five for a quorum. This morning you had to wait twenty minutes; and to-morrow I undertake to say you will wait all day for a quorum. Shall we waste your time and ours in this way? I think that is

not a trial according to the spirit and provision of the Constitution. We are persuaded, if the trial proceeds, and these depositions are introduced, that the trial will be abruptly arrested before it is brought to a final termination, and we will be prejudiced by the introduction of evidence against us, the explanation of which, on our part, is cut off. If you commence this trial, you desire to terminate it now; but isn't every Senator about the circle convinced that if this case continues to next week you will not see a quorum? It is an absolute impossibility to conclude this trial until the middle of next week, in my judgment. There is a volume of testimony upon which they rely, and upon which we too, to a certain extent, rely; besides which, they are to produce witnesses as we certainly shall do, and the whole will be followed by such suggestions by way of argument as counsel may see fit to make. If the Senate feel satisfied that there will be a prompt and full attendance of Senators, we are ready to go on; if not, it is due to us and to the Senate that this trial should be postponed. We make no application for postponement on the ground that we are not ready; but we insist that we shall be tried according to the spirit of the Constitution. If the Senate is satisfied that there can be prompt and full attendance, which will enable us to be tried, then go on. If not, we say you ought to stop.

[At this point of the proceedings, a debate was had on resolutions in reference to giving a welcome to the President of the United States, Gen. Grant and Admiral Farragut, at the conclusion of which the proceedings on trial were resumed.]

Mr. FOLGER: I think that if that motion had been put at the time it was made, perhaps it would have been adopted; but it is quite evident since then [referring to the debate on the resolutions of welcome to the President, &c.] that gentlemen can attend to transactions of business, or see business in which they have an interest. Now, then, have we an interest in the trial, for the transaction of which we have been called here? I think we can attend this week just as well as we can the first week of the next session, and if we cannot attend here this week, I doubt whether we can attend then. It all results in that—whether, whenever this case is to be tried, we are to have a full attendance of the members of the body which is to try it? I supposed on the first or second week of the next session, we should be disposed to attend in the chamber, in the afternoon or evening of the days of the session, to give our attention to this matter and dispose of it,

but it has been suggested by those who have had more experience than I have, that it is difficult, even to get attendance of a committee, during the first two weeks of the session, and it may be difficult, and it will be difficult, and it is almost a certainty, judging from the past, when that session comes around that we shall be in the afternoon without a quorum, and of course we cannot attend to it forenoons, for then our regular legislative business will demand our attention. The object of the motion, and what is sought to be achieved by it, is to have a full Senate, a prompt attendance and attention from day to day of those who begin the trial. I am free to admit it is impossible now. I am free to admit that personal considerations and demands upon the attention of Senators will take them away, one by one, during the progress of this trial. For instance, next week the court sits in the district where I reside, where I must go, or sacrifice my professional relations. My client depends upon me to attend a cause which is to come off there, and I must be there at the beginning of the court; I must be there until that case is called, and I must be there until it is finished. I cannot be here next week, for that reason, and I suppose other Senators are situated in precisely similar circumstances. From day to day one or another will have to be going for some purpose which is urgent or imperative, and cannot be put aside. Shall we be any better off when we come here at the next session, on the first Tuesday in January. In the progress of the regular business of the session, we are well aware that we very seldom see these seats full, and many, very many, highly important questions are disposed of by a bare majority of a bare quorum. So it is for us to consider whether we shall be any better situated when we come together in 1867 than we are in 1866. I do not think we will. We are so far advanced now with this trial that we are upon the brink of entering into the testimony, and I think we had better begin and progress in it, to some extent, at least, and then if it is found necessary, from the engagements of the Senate, or court, or jury, whichever you choose to style this body, then we can take an adjournment to some speedy day.

Mr. GIBSON: Justice should be certain and should be speedy. This judge of the county of Oneida is either guilty or innocent. If he is innocent he has a right to have that immediately determined; if he is guilty, the people of Oneida county, the lawyers of that county and the litigants, have a right to say that he shall not longer occupy that official position with these charges made

against him. He is therefore innocent or guilty, and one or the other should be speedily determined. If we postpone this till the first of January, we shall only be putting off the time; it has been put off several times already. It should be speedily heard, for the security, convenience and the interest of the people of the State. I am opposed to any adjournment of the case whatever; I am in favor of immediately proceeding with the hearing, and hearing it as far as we can, and then if circumstances shall require an adjournment, let us adjourn it for the shortest possible time, and then proceed again with the hearing. I think the rights of the accused, and the rights of the people are all interested in a speedy, sure and certain result to this trial, and all hope it will not be postponed.

Mr. SHAFER: It is conceded, as I understand, by the distinguished Senator from the Twenty-sixth [Mr. Folger] and the Senator from the Twelfth [Mr. Gibson] that there is a prospect that the trial may not be concluded at this time. I beg leave to remind the Senator, that we expressly declared when we made this motion, that we were anxious to proceed with the trial, provided we could have a prompt and reasonably full attendance of Senators. As I understood the Senator from the Twenty-sixth [Mr Folger] he states that he will be compelled next week, to be absent himself, by reason of professional engagements, and there is a prospect that other Senators because of professional or private engagements may have also to absent themselves. That is precisely the dilemma we desire to avoid. We desire to avoid the introduction of evidence, upon the part of the prosecution, thus partly finishing the case and then have an adjournment until some subsequent day, or until the next session. I agree that the trial should be a speedy one—we are anxious and the people are anxious—but I would suggest, in answer to what has been said by the Senator from the 26th [Mr. Folger,] that if on the first Tuesday in January the Senate is not full, I understand that on the second or third week there is always a full Senate. But the idea that we shall proceed with this trial, when it is conceded by those who are anxious to proceed, that they must absent themselves (and the counsel understand that other Senators must absent themselves), is virtually to say, we shall be tried by a mere quorum, and that quorum shall be shifting like the sands of the sea every single day. That is just what we desire to avoid, and it is a matter of great importance to this respondent. He is entitled

to some kind of a trial, and we insist it shall be a fair trial and a trial according to the spirit of the Constitution, to wit, by a full Senate. These vacant chairs and empty seats to be filled by Senators who have not heard a portion of the evidence, and those occupied now to be vacated by those who heard the trial to-day, is that a trial or a farce? No one is more anxious for a trial than the respondent in this case, yet he desires that it shall be to some extent a trial such as is accorded to citizens of the State according to the Constitution.

Mr. SMITH: I have a single suggestion to make in answer to the suggestions made, that there will be a difficulty in securing the attendance of Senators during the early part of the session, for the reason that heretofore in the legislative proceedings it has been difficult to secure such attendance. I assume that every member of this Senate has so full an appreciation of the duty he owes to the State, on the trial of this case, that he would be in attendance here whenever this trial took place, unless the time is such as to interfere with private engagements of such importance as would justify him in disregarding this public duty, and such as he could not control. In the beginning of the session of the Senate, the business affairs of the Senators are so arranged as to enable them to give this case their attention, and I feel very sure that if they were, under those circumstances, the attendance would be full. I want to answer another suggestion, and that is, that the administration of justice should be speedy; that it is due to the accused and due to the profession, and the litigants of the county of Oneida that it should be. I acquiesce entirely in that suggestion, but I submit that the argument should not be carried in the slightest degree toward the doctrine of Judge Lynch. While the administration of justice should be speedy, it should be by the tribunal created by the law to administer it; and I submit to Senators that it is not just to this man, it is not just in a case of considerable magnitude, and would not be tolerated in any of the courts of this State organized by statute, that the trial of a case, even of the most insignificant importance involving the merest trifle of property should be heard and adjudged by a court, the attendance of the members of which was constantly changing. For instance, in the Court of Appeals a member may be nominally present so as to constitute a quorum, and so as to be regarded as participating in the proceedings; yet, when it comes to the judgment, he does not vote unless he has heard the case. In many of the courts he could

not vote if he would. I think in a case involving the great amount of detail, which must be involved by the evidence here, it is but fair that we should have a reasonably full and prompt attendance of our judges. I say this now to repel, even any inference that there is any desire to delay on our part. We desire a speedy trial; we want a prompt trial; but we desire that our case may be heard by the judges constituted by the law, and that those who hear the case shall decide it.

Mr. GIBSON: The counsel's remark is not exactly a fair statement of my argument. I said that justice should be "speedy and certain."

Mr. Gibson moved that the Senate be cleared for consultation and deliberation.

Which was carried.

On the doors being reopened, the President announced that the Senate had denied the request of the respondent for an adjournment of the proceedings until its regular session in January, 1867.

OPENING ARGUMENT FOR THE PROSECUTION.

Daniel Waterman, Jr., Esq., made the following opening on behalf of the prosecution :

The few remarks which it has become my duty to present to you preliminary to the introduction of the testimony in this case, and by way of an opening, might very naturally be reduced to four heads, as they will be mainly an attempt to answer these four queries:

1. What is it that we, the prosecution, ask at your hands ?
2. Why do we ask it ?
3. Can the relief we ask be here granted ?
4. Should it be granted ?

And although I shall not attempt in what I have to say, to observe with any great degree of strictness or particularity these channels or divisions of my subject, they will serve perhaps, in a general way, to indicate the drift and bearing of the considerations I have now the honor to present before you.

Why do we ask this relief at your hands?

In May, 1865, a court martial was directed to be held by the head of the War Department of the United States government, for the trial of Major John A. Haddock, for corrupt conduct in the discharge of the duties of the office of Acting Assistant Pro-

vost Marshal General of the Western Division of the State of New York. He was at the head of the recruiting service in that division of the State.

The charges made against him, and the specifications under these charges as alleged, related largely to transactions connected with the Twenty-first Congressional District, embracing the county of Oneida, which was within his department or division.

The fourth charge alleged on his part generally, fraud, malfeasance in office, abuse of official powers, complicity with bounty brokers in his division, accepting presents and bribes, agreeing to accept presents and bribes, proposing to accept presents and bribes, being interested pecuniarily in recruiting and filling quotas in the Western Division of the State of New York.

The twenty-sixth specification, which was the same in this as in the other charges, reads as follows:

"In this that the said Major John A. Haddock, Twelfth regiment, V. R. Co., and A. A. P. Marshal General of the western division of New York, in violation of his duty as such officer, and of the article of war and of the other statutes and laws of the United States, did combine, conspire, confederate and collude with one George W. Smith, of the city of Utica, in the State of New York, and with others residing at Utica and elsewhere, to become pecuniarily interested in the business of recruiting in said division, and to cheat and defraud the people and loyal authorities of certain districts in said western division, and the recruits mustered in said district and the Government, and to enter into corrupt complicity with bounty and recruit brokers to make gains and profits out of recruiting in said division, and to obtain and receive pecuniary and valuable inducements for granting special and illicit facilities and opportunities to bounty brokers and those engaged in recruiting and filling quotas, and pursuant to said conspiracy with George W. Smith and others, residing at Utica and elsewhere, did become pecuniarily interested in the business of recruiting in said division, and did, together with said Smith and others residing at Utica and elsewhere, enter into corrupt complicity with bounty and recruit brokers for the purpose of making unlawful gains out of recruiting and filling quotas in said division, and did receive valuable inducements for granting special illicit opportunities and facilities to bounty and recruit brokers."

A voluminous mass of testimony, documentary and otherwise,

was taken upon this trial, which extended through several weeks, and the result of that trial was a verdict of guilty.

MR. SHAFER: We must object to this; and the ground of our objection is, that the charges made by the War Department against John A. Haddock, and the evidence given on that trial, and the judgment and the sentence of that court can in no way be operative as against this respondent; and that it is entirely improper for the counsel, in his opening, when the respondent was in no way a party to that proceeding, to read the charges that were made against John A. Haddock, and the judgment and the sentence of the court upon them. We have never in any way been a party to that proceeding. It is totally irrelevant to the investigation now had against this respondent.

MR. WATERMAN: I had concluded what I wished to say on that subject, and I merely alluded to that, as it might be thought necessary to show some good reason why we have brought these charges before the Senate.

MR. SHAFER: I withdraw the objection, if the gentleman, at this stage of the trial deems it necessary to justify the initiation of the proceedings.

MR. WATERMAN: So far as any justification is concerned, it is to be found in the published record of those proceedings. I have a right, however, to say this: if this man, the county judge of Oneida, had been named in the indictment against Haddock, he would have been bound by that, and we should have produced our record here, and that would have been all that would be necessary. He was not, however, a party to that transaction, and is not bound by it; because a party who is not named in the indictment, a party not named in the bill, has no opportunity of being confronted with witnesses, or of cross-examining them. But in this case it was different. This man, Judge Smith, attended during the whole of that trial as counsel for the defendant.

MR. SHAFER: Mr. PRESIDENT—I desire to know whether the counsel insists that Judge Smith is in any way bound by these proceedings, or whether they are relevant in this proceeding. We object to the introduction, even by way of opening on the part of the prosecution, of the proceedings against Haddock, when he concedes, specially, that he was not a party to them, and is not bound by the result.

THE PRESIDENT: The chair understands the counsel for the

accused to make a distinct objection to any allusion to this matter of the Haddock trial.

Mr. SESSIONS: I desire the counsel for the accused to answer two questions: If these proceedings were jointly against Haddock and Smith; or if Smith was introduced as a witness on the trial, and they propose to read his declarations, given in evidence on the trial? If neither of these facts are proposed to be shown, I do not see the relevancy.

Mr. WATERMAN: The trial of Haddock was before a court-martial, and Judge Smith was not a party to it, except that he was present at the trial, and was sworn as a witness on the part of the defense, and the testimony he gave on that trial will be the main evidence the prosecution propose to offer here. That is one object of my alluding to it. I do not know but it is entirely unnecessary to offer any explanation whatever for coming here.

Mr. SHAFER: I do not wish to be misunderstood upon this objection. We shall not object to the counsel talking as long as he chooses, in his opening, or to his proving what Judge Smith swore to; but we do object to his lugging in here what the charges were against Haddock, or what the judgment or sentence was. That is the distinction I make. Aside from his testimony, whatever part the respondent took in that proceeding is entirely immaterial, whether he acted as counsel, or not, is entirely immaterial. What he swore to may be introduced as his admissions; and we propose to hold the prosecution to some well recognized rule of law. We do not object to his descanting at any length upon what evidence Judge Smith gave.

Mr. WATERMAN: I have said all I desire to say on that branch of the subject. I desire, Mr. President and gentlemen of the Senate, more minutely and perhaps more in detail than may be profitable, precisely to state what it is we are asking at the hands of this body. This has been called in the papers a "Court of Impeachment." It has been called the "Trial of Judge Smith." I desire to say it is neither the one nor the other; and what we ask is simply the removal of an officer from the position of trust he holds. I desire to make one or two propositions as to the nature of what we call an office.

We live, Mr. President, in a government of delegated powers, a representative democracy. The people in whom originates all power, all authority, exercise that power, that authority only

through their agents, whom they select for particular purposes, and to whom they delegate particular functions. The sovereignty of the people remains in themselves, but is exercised and manifested through such channels and by such instrumentalities as they may designate.

We are sometimes prone to forget or overlook the real nature of that which we call an "office," as if it were something independent of or above the people. We are sometimes accustomed to feel and to act as if there were some virtue, some power, some authority inherent in the office itself, or as if it were the channel of some power superior to that of the people.

We are yet but in the childhood of our institutions, and the ideas which had been implanted and strengthened by the growth of centuries under other and different forms of government, yield but slowly to the new and grander principles which were here to find an outgrowth in a government of the people, for the people, and of the people.

The king, says Blackstone, is the fountain of honor, of office, and of privilege. He is the parent of them all. It is impossible, he says, that government can be maintained without a *due subordination of rank*, that the *people may know and distinguish such as* are set *over them*, in order to yield them due respect and obedience.

The king has the sole power of conferring honors and dignities, and all degrees of nobility, of knighthood, and other titles are secured by immediate grant from the crown.

From the same principles also arises the prerogative of erecting and disposing of offices, for *honors* and *offices* are convertible terms. All offices under the crown carry in the eye of the law an honor along with them. And as the king may create new honors and new titles, so may he create new offices.

So the king has also the prerogative of conferring privileges upon private persons. Such as granting place or precedence to any of his *subjects* as shall *seem good to his royal wisdom*, &c.

And so the sovereignty which in and under a monarchical form of government was vested in a monarch or king, might be divided and separated at the pleasure of the sovereign. And offices might be, and did in fact come to be, regarded and recognized as property, as franchises, as possessing inheritable and transmissible qualities; "they were attended with certain honors and privileges which the law recognized and protected as property."

It is unnecessary to remark that the whole theory of our form of government is based upon an entirely different principle from this.

The people in their own right are the only source and fountain of sovereign power.

The moving spirit in the whole frame-work of our government, in all its different departments, in all its ramifications and details, speaks always in one voice—We, the People.

It speaks in the opening words of the Constitution of the United States:

"We, the People of the United States, in order to establish justice, insure domestic tranquility, provide for the common defense, promote the general welfare and secure the blessings of liberty to *ourselves* and our posterity, do ordain and establish," &c.

It speaks in the preamble of our own State Constitution:

"We, the people of the State of New York, grateful to Almighty God for our freedom, in order to secure its blessings, do establish this Constitution."

It speaks in every process and writ from our courts of justice. From every law upon our statute books; from every official document, and in every official act, we may and should recognize, through the official mask, the power, sovereignty and majesty of the people.

This power and sovereignty must necessarily manifest itself through the forms of law and organized instrumentalities.

If an original frame-work of government is to be established, or destroyed, or modified, it acts through the medium of a popular convention, selected by the people for that purpose. Its will is made known through the channel of the Legislature, designated by the people for that especial purpose. It is interpreted by the judiciary, and carried into effect by the executive and administrative officers of the State. And the selection of these instruments—these agents—the people have reserved to themselves.

The policy of our present organization of government is to make all important officers elective, and to shorten the term of service so much as might be compatible with an efficient and energetic discharge of its duties by the incumbent.

An office, in this country, has been defined as a public trust or agency. "An officer," says Wharton, "is a man employed by the public; of whom there is a multitude." "A public officer," say the court in Conners *v.* The City of New York (2 Sand. 355), "is

an agent elected or appointed to perform certain political duties in the administration of the government. The legislative power prescribes these duties, and gives to the officer such compensation for their discharge as is deemed just. The same sovereign power which prescribes the duties may alter them at pleasure. It may increase them without changing the compensation." (Andrews *v.* The U. S., 2 Story, 202.)

These consequences flow from the political character of the agency and the supremacy of the government in regulating it for the public good.

There is no contract, express or implied, between a public officer and the government whose agent he is.

The people have the entire control on their part, and the officer on his part is under no obligation to continue to discharge his duties a single day. He may resign, and no power of the government can prevent him.

After citing certain authorities, the court further says: "Upon the whole, these authorities, with the nature of the duties and employment of a public officer, seem to us conclusive to show that an officer has no property in the office, or in the prospective compensation attached to the office, whether it be in the shape of salary or fees.

In speaking of the case of The State v. Deus (R. M. Charlton's Rep. 397), the court says: "Judge McM., in this case examined the subject of the rights of public officers with great ability, and more at large than it has been done in any case which has come under my observation. His argument leads immediately to the results which he maintained:

"First. That public officers under our government have no proprietary interest in their offices, and

"Second. That there is no contract between them and the government that their duties, and the rights flowing from their discharge, may not be changed during their continuance in office."

Again the court says: "In this country there are no inheritable offices, nor any depending upon ancient usages or customs."

All public offices emanate from the people, and are governed by the Constitution and the laws. Their tenure is defined by the one or the other, and when no tenure is expressed, the officer holds during the pleasure of the appointing power.

Public offices are held and exercised for the *benefit of the community*, and not for the benefit of the incumbent.

"*It should never be forgotten,*" says Judge Story, § 1530, "*that in a Republican Government offices are established and are to be filled, not to gratify private interests and attachments, not as a means of corrupt influence or individual profit, not for cringing favorites or court sycophants, but for purposes of the highest public good, to give dignity, strength, purity and energy to the administration of the laws.*"

Such then is the nature of an office. It is a public trust or agency, established and to be filled for the discharge of certain public and political duties, and revocable always at such times and in such manner as the people may direct.

The appointment or election to office has in it nothing of the element of a contract. It confers upon the incumbent no right or property in the office, which the law recognizes as between the officer and the public.

They may change the duties of the office, increase or diminish its compensation, at their pleasure. He may perform his official duties so long as he sees fit, and terminate his official responsibilities at his own pleasure by resignation.

In the theory of our government, an appointment or election to a public office is not in any sense a reward for past services, however eminent they may have been, neither is the removal from office in any just sense a punishment.

The election or appointment is the selection of a public agent by the people, to perform certain political duties for his presumed fitness for the proper discharge of these duties, in the interests and for the benefit of the public.

His removal is the expression of the will of the people, that the incumbent *does not* possess those mental, moral, physical or political qualifications necessary to the proper discharge of these duties or that the public interests would be more carefully guarded in the hands of some other person.

The adoption of the Constitution of 1846 swept out of existence all the judicial officers of the State. Judges were removed by the wholesale—high and low. The chancellor and vice chancellors, masters in chancery, judges of the supreme court, and judges of the county court. Officers who held by life tenures, secured by the Constitution, who by the will of the people as before expressed, were entitled to hold their offices during good behavior, and who had administered the duties of their offices wisely and well for years, against whom no charge had been made, against whom no

suspicions had been whispered, all passed into retirement at one breath of the popular will—at one expression of the sovereign power of the people.

A breath had made them and a breath unmade them.

They had been worthy, and useful and honored public servants, but their services were no longer needed.

The people, in the exercise of their own sovereignty and of their own pleasure, and for their own benefit, had selected them as agents for the administration of a particular function of the Government, and of their like good pleasure they removed them.

And by such a tenure, and no stronger one, does every officer of this State hold his office.

He accepts it with the understanding that misconduct therein is a forfeiture thereof; that conviction for an infamous crime vacates it. That a violation of his oath of office vacates it. That he is always accountable directly to the people, and liable to removal always at such time, in such manner, and for such cause as the people may direct. There is no contract between them to prevent it. There is no power inherent in the office to prevent it. Now the State, by which I mean the embodiment of the sovereignty of the people, in prescribing fixed and certain tenures for the great majority of the offices it has created and filled, has not by any means blinded its own eyes, or bound its own hands, so that it may lie one, four or ten years, helpless as a dismantled hulk to be the prey of inefficiency, imbecility, fraud or corruption.

It foresaw that all men are fallible; that new and untried positions bring new and unknown dangers, and that some would succumb to temptations that would offer; that some would prove themselves corrupt, sordid, mean, treacherous and dangerous; that they would use the power, influence and position entrusted to them by the people, and for the people, for corrupt and selfish purposes. It foresaw that such practices, long persisted in, if beyond the reach of justice and law, would endanger the safety of the State, and tend to corrupt, debauch and degrade the virtue of the people, and it provided as ample remedies as the nature of the case would admit.

These remedies are two-fold in their character, one preventive, the other corrective.

1. Requiring certain qualifications for certain offices.
2. Requiring an oath of office to be taken.
3. Requiring penal bonds for faithful discharge of duty.

4. By closing up the main channels or avenues through which temptation might come.

We shall consider this last more particularly, when we come to speak more particularly of the constitutional and statutory restrictions thrown around the judiciary of this State.

All these provisions and others that might be mentioned are devised and intended to preserve and insure, as far as human precaution might accomplish it, official honesty and faithfulness in the discharge of public duties. But if all these proved unavailing, one other remedy remained, in the removal of the incumbent.

We are all quite familiar with the process by which public offices are filled, whether elective or otherwise. Let us look at the other branch of the subject for a moment.

Removals may be made,

1st. At pleasure;

2d. For cause.

Generally speaking the power of nomination and appointment to a public office implies and embraces the corresponding power to remove, in all cases where the official term is not determined by constitution or statute.

Nay, the power of nomination alone, without the conjoint power to appoint, has been held by the decisions and practices of the General Government, sufficient of itself to import and imply the sole and exclusive power to remove.

Thus, in the U. S. Constitution, there is no authority or power expressly given to the Executive to remove the varied and important Federal officers, whose appointment is by the Senate upon the nomination of the Executive; and yet the right of removal and the sole and exclusive right was only claimed by the Executive and admitted by the Senate, and has been for many years unhesitatingly claimed and exercised with the entire acquiescence, if not the approbation of the people.

I need not enlarge upon this point at the present time.

The people, however, as the ultimate source of authority, may locate the power of removal with the appointing power or elsewhere; and this in all cases whether the tenure of office be determined or not.

Let us see what provision has been made in our own State, constitutional or statutory, for this end.

And first, we find organized under the Constitution of 1846, a court composed of the highest representative deliberative body in

the State, acting conjointly with the highest judiciary body in the State, organized as a criminal court, having an exclusive and undefined criminal jurisdiction, whose special end and object is the trial of political offenders, for political offenses; the highest court for the trial of impeachment.

Its jurisdiction in respect to its subject matter is undetermined, undefined and undefinable. No attempt is made in the Constitution, to specify what parties or what offenses are subject to its jurisdiction.

The only provisions of the Constitution bearing at all upon the subject are these :

Art. 1, § . No person shall be held to answer for a capital or otherwise infamous crime (except in case of impeachment, &c.), unless on presentment or indictment of a grand jury. And in any trial in any court whatever, the party accused shall be allowed to appear and defend in person and with counsel, as in civil actions.

Art. 4, § 5. The Governor shall have power to grant reprieves, commutations and pardons after conviction for all offenses except treason *and cases of impeachment.*

Art. 4, § 6. In case of the impeachment of the Governor, or his removal from office, death, &c., the duties of his office to devolve upon the Lieutenant Governor.

Art. 4, § 7. If, during vacancy in office of Governor, the Lieutenant Governor be impeached, displaced, die, &c., the president of the Senate shall act as Governor.

Art. 6, § 1. *The Assembly shall have the power of impeachment,* by the vote of the majority of all the members elected.

Composition of Court, Senate and Judges Court of Appeals. No judicial officer shall exercise his office after he shall have been impeached until he shall have been acquitted.

Members of the court to be sworn, &c. Concurrence of two-thirds to convict.

Judgment in case of impeachment shall not extend further *than to removal from office,* or *removal from office and disqualification to hold and enjoy any office of honor, trust or profit under this State.* But the party impeached shall be liable to indictment and punishment according to law.

These are all the provisions of the Constitution on the subject.

It provides for the organization of the court, and limits the extent of judgment it may pronounce, and it implies that the Governor, Lieutenant Governor and judicial officers may be impeached.

It assumes that the court itself, its jurisdiction in respect to the subject matter, and of the person, was well known and understood at the time of the adoption of the Constitution, and that in default of any express provisions in the Constitution itself, recourse must be had to the statute of the State as to the principle of the common law.

I will not stop to speak of the constructive powers and jurisdiction of this court, as recognized in the common law, and in the practice of the English court of impeachments, further than to say of it this:

1. That in its form it was the model after which all courts of impeachment within the United States are framed.

2. That its jurisdiction embraced all subjects of the realm, whether occupying official positions or otherwise.

3. That it embraced all classes of offenses, political and social, and whether indictable or not.

4. That it had jurisdiction to try, adjudge, convict and punish for offenses, in their social as well as their political aspect; that upon the trial of an officer the punishment could be visited as well upon the person as upon the officer; and in addition to the punishment of removal and disqualification, could be added fine, imprisonment, banishment, confiscation of his goods, or death.

Such was the common law or parliamentary Court of Impeachment.

The judiciary act, passed May 12, 1847, declares that "all laws relating to the court for the trials of impeachments, the jurisdictive powers and duties thereof, the proceedings therein and the officers thereof, and their powers and duties, shall be applicable to the court for the trial of impeachments organized under this act," &c.

The prior laws here referred to are these: 2 R. S., Edmonds' Ed., page 172, and 1 Ib., page 153.

The statute first cited is that article of the Revised Statutes entitled "Of impeachments, and the mode of conducting them."

§ 12. All impeachments shall be delivered by the Assembly to the president of the Senate, who shall thereupon cause the court for the trial of impeachments to be summoned.

§ 13. The court, when summoned, shall cause the person impeached to appear and answer.

§ 16. Each member of the court shall be sworn truly and im-

partially to try and determine the charge in question, according to the evidence.

§ 18. No person can be convicted unless two-thirds concur, &c.

The second citation is § 15 of the Title: "Of the powers, duties and privileges of the two houses, and their members and officers."

§ 15. The Assembly has the power of impeaching *all civil officers of this State for mal and corrupt conduct in office, and for high crimes and misdemeanors*, but a majority of all the members elected must concur in an impeachment.

It will be observed that these provisions which are not peculiar to our own State, but are found in substance either in the Constitution or in the statute books of the General Government and most of the States, that the Court of Impeachment as constituted in this country is the common law Court of Impeachments, with certain qualifications and limitations.

1. It restricts its jurisdiction to official offenders — all civil officers of the State.

2. In respect to the subject matter it is restricted to—*mal* and *corrupt* conduct in office, and high crimes and misdemeanors.

3. It separates the officer from the person, visits its punishment upon the officer by removal and perpetual disqualification from ever holding an office under the State, and it hands the offending person, thus stripped of his official character, over to the ordinary tribunals of justice for trial and punishment there if the occasion demands it.

The attempted definition of impeachable offenses given in the language of the statute I have quoted has, as you are well aware, been the occasion of much discussion and argument.

What is mal conduct in office?

What is corrupt conduct in office?

Whether the offense charged to be impeachable must be both mal and corrupt?

What constitutes a high crime?

What is meant by misdemeanor?

Is it the statutory or common law misdemeanor, or what?

Does high qualify misdemeanor as well as crime?

What is the dividing line between corrupt conduct, mal conduct in office and out of it?

Does it mean corrupt conduct or malconduct of any kind on the

part of one who occupies an official position, or is it limited to corrupt conduct in the line and in the discharge of official duty?

The statute has not defined these words, and the history of impeachments in this country, in the Federal and State courts, shows that the attempt to define an impeachable offense, has hitherto proved a failure.

Thus we find that in the organization and jurisdiction of this court of impeachments, the people have provided an ultimate means for the removal of each and every civil officer within the State, for causes coming within the language of the statute—mal and corrupt conduct in office and high crimes and misdemeanors.

We have said that an impeacement is the ultimate remedy of the people, and like all ultimate remedies, it is seldom invoked or exercised. Were this the only means which had been provided for the removal of inefficient, corrupt and criminal officials, the people of the State would indeed be helpless at the feet of their own servants, and the calandar of the court would be hopelessly clogged.

Every case which calls for surgical treatment, does not require the knife.

Impeachment is reserved for rare occasions, and when a public example is needed, when the offender should not only be removed from office, but punished by perpetual political outlawry.

Judge STORY, says: Section 688. "An impeachment as described in the common laws of England, is a presentment by the House of Commons, the most solemn grand inquest of the whole kingdom to the House of Lords, the most high and Supreme Court of criminal jurisdiction of the kingdom." Both in England and in the United States, he says: "The object of prosecutions of this sort is to reach high and potent offenders, such as might be presumed to escape punishment in the ordinary tribunals either from their own extraordinary influence, or from the imperfect organization and powers of these tribunals.

These prosecutions are therefore conducted by the Representatives of the nation, in their public capacity in the face of the nation, and upon a responsibility which is at once felt and reverenced by the whole community.

The notoriety of the proceedings; the solemn manner in which they are conducted; the deep extent to which they affect the reputations of the accused; the ignominy of a conviction which is to be known through all time; and the glory of an acquittal which

ascertains and confirms innocence, these are all calculated to produce a vivid and lasting interest in the public mind, and to give to such prosecutions when necessary a vast importance, both as a check to crime, and an incitement to virtue."

I have a number of other citations which I do not deem it necessary to give.

At section 764 he says: "The offenses to which the power of impeachment has been, and is ordinarily applied as a remedy, are of a political character. Not but that crimes of a strictly legal character fall within the scope of the power (for, as we shall see, treason, bribery, and other high crimes and misdemeanors, are expressly within it—Cons. U. S.), but that it has a more enlarged operation, and reaches what are aptly termed political offenses, growing out of *personal misconduct*, or *gross neglect*, or *usurpation*, or *habitual disregard of the public interests* in the discharge of the duties of the political office.

"These are so *various in their character and so indefensible in their actual involutions, that it is almost impossible to provide systematically for them by positive law. They must be examined upon very broad and comprehensive principles of public policy and duty.* They must be judged of by the habits and rules and principles of diplomacy, of departmental operations and arrangements, of parliamentary practice, of executive customs and negotiations, of foreign as well as domestic political movements; and, in short, by a great variety of circumstances, as well those that aggravate as those which extenuate or justify the offensive acts, which do not belong to the judicial character in the ordinary administration or justice, and are far removed from the reach of municipal jurisprudence. They are duties which are easily understood by statesmen and are rarely known to judges."

"It is apparent," says Woodsson, in his Lectures, "how little the ordinary tribunals are calculated to take cognizance of such offenses, or to investigate and reform the general polity of the State." (Story, § 766).

§ 765. In the next place it is obvious that the strictness of the forms of proceedings in cases of offenses at common law is ill adapted to impeachments. The very habits growing out of judicial employments, the rigid manner in which the discretion of judges is limited and fenced in on all sides, in order to protect persons accused of crimes, by rules and precedents; and the adherence to technical principles, which perhaps distinguishes this

branch of the law (criminal branch) more than any other, are all ill adapted to the trial of political offenses in the broad course of impeachments.

It has been observed with great propriety (and the author here cites from Rawle on the Constitution) that a tribunal of a liberal and comprehensive character, confined as little as possible to strict forms, enabled to continue its session as long as the nature of the case may require, qualified to view the charge in all its bearings and dependencies, and to appropriate on sound principles of public policy the defense of the accused, seems indispensable to the value of the trial.

The history of impeachments both in England and America justifies the remark.

There is little technical in the mode of proceeding. The charges are sufficiently clear and yet in a general form. There are few exceptions which arise in the application of the evidence which grow out of mere technical rules and quibbles.

And it has repeatedly been seen that the functions have been better understood, and more liberally and justly expounded by statesmen than by mere lawyers.

In Warren Hastings' case, the House of Lords decided that a dissolution of Parliament did not work an abatement of the impeachment, against the opinion of most of members of the legal profession.

In section 775, in speaking of the wisdom and propriety of locating this power in the Senate, and using the language of Mr. Hamilton, in the Federalist, No. 65, he says:

That of all the departments of the government "none will be found more suitable to exercise this peculiar jurisdiction than the Senate. Although, like their accusers, they are representatives of the people, yet they hold their stations for a longer term, and are further removed from them. They are therefore more independent of the people, and being chosen with the knowledge that they may, while in office, be called upon to exercise this high function, they bring with them the confidence of their constituents that they will faithfully execute it, and the implied compact on their own part that it shall be faithfully observed."

Again, in speaking of the propriety of the constitutional limitation of the President to removal and disqualification, he says, in section 785: As the offenses to which the remedy of impeachment has been and will continue to be principally applied are of a political

nature, it is natural to suppose that they will be often exaggerated by party spirit. From the nature of the offenses it is impossible to fix any exact grade or measure either in the offenses or in the punishment, and a very large discretion must unavoidably be vested in the Court of Impeachments as to both.

Any attempt to define the offenses, or to affix to any grade of distinction its appropriate measure of punishment, would probably lead to more injustice and inconvenience than it would correct; and, perhaps, would render the power at once inefficient and unwieldy," &c.

§ 786. There is wisdom, sound policy and intrinsic justice in the separation of the offense, at least so far as the jurisdiction and trial are concerned, into its proper elements; bringing the political part under the power of the political department of the government, and retaining the civil part for presentment and trial in the ordinary form.

§ 782. If the Court of Impeachments is merely to pronounce a sentence of removal from office and other disabilities, then it is indispensable that provision should be made that the common tribunals of justice should be at liberty to entertain jurisdiction of the offense, for the purpose of inflicting the common punishment applicable to unofficial offenders. Otherwise, it might be a matter of extreme doubt whether, consistently with the constitutional maxim that a man should not be twice put in jeopardy of life or limb for the same offense, established for the security of the life and liberty of the citizen, a second trial for the same offense could be had, either after an acquittal or a conviction in the Court of Impeachments. And if no such second trial could be had, then the grossest official offender might escape without any substantial punishment, even for crimes which would subject their fellow-citizens to capital punishment.

Mr. SESSIONS: I would inquire from counsel for the accused whether they intend to controvert the power of the Senate.

Mr. SHAFER: Aside from the question of jurisdiction, which has been passed upon, we do not intend to raise any other.

Mr. SESSIONS: Then I do not see the necessity for presenting such an array of authorities.

Mr. WATERMAN: I am inclined to think that before we get through, one question will come up—as to whether the charges which we propose to prove are such as the accused might be indicted for in a court of law, and whether, if they are of that de-

scription, we have a right to come here with them. I cannot tell what position the counsel may take; but I can see that it may not be wholly undesirable for the Senate to know something of the powers that appertain to a court of impeachment, and what the practice has been in our own State, and in the general government heretofore, for the purpose of ascertaining as nearly as may be the nature of proceedings of this description.

Mr. SHAFER: I would like to hear the counsel *in extenso* on that subject; whether we can be removed for a cause for which we cannot be impeached.

Mr. WATERMAN: That is one reason why I have given these citations from Judge Story. I have quoted somewhat at length his remarks upon the general subject of impeachment, for the purpose of bringing before you something of the nature, extent, jurisdiction and practical working of this proceeding which I have called the ultimate remedy in the hands of the people for its own protection against the corruption and crimes of their own officers and agents, and for the purpose of comparing with it and illustrating by it some of the other remedies which remain to be noticed.

We have seen that the remedy is confined to a court specially organized for that purpose. The highest court of criminal jurisprudence in the country.

1. It is organized as a court.
2. Its members are sworn as judges.
3. It is authorized to pronounce judgment.
4. And upon conviction to inflict punishment.
5. Its jurisdiction embraces all the civil officers of the State.
6. In respect to the subject matter it has cognizance of all that wide and undefined range of offenses, which in the opinion of the court come within the meaning of the words:

"Mal and corrupt conduct in office and high crimes and misdemeanors."

7. The court is invested with a large discretion; free from the trammels of technical forms and rules which prevail in criminal courts in general, and is expected to exercise its powers and perform its duties, guided by elevated views of public policy, and the general welfare, standing as the representatives of the people in their sovereign capacity.
8. Their jurisdiction embraces offenses above, and beyond the

reach of other criminal courts; offenses not declared or recognized by any statute, nor the subject of any indictment elsewhere.

9. The organization and character of the court; the form and manner of its proceedings, and its history under the General as well as State government, shows that it was intended to be, and as a matter of experience and practice it has been regarded as an ultimate remedy, seldom called into exercise, but a remedy which, from the mere fact of its existence in our Constitution and upon our statute books, and the knowledge of its all embracing tremendous powers being in abeyance should be, as practically it has proved to be, mighty in its silent influences to restrain, overawe and repress those evil tendencies in the human heart, that else would grow into corruption, oppression, fraud and crime.

Impeachments in America have been rare. Under the United States Constitution, I am aware of but four: William Blount, a Senator in 1799, for an alleged attempt to seduce an U. S. Indian interpreter from his duty, and to alienate the affections and confidence of the Indians from the public officers residing among them.

Judge Chase, in 1805.

Judge Pinckney, in 1803, for discharging a vessel from the custody of the Marshal, without requiring the security provided by law, and other abuses and delinquencies in office.

Judge Peck, in 1831, for an abuse of judicial power in punishing a member of his bar for contempt, by imprisonment and deprivation of office.

In Pennsylvania, several impeachments.

Judge Addison, for refusing to allow his associate, one of the side judges, to address the grand jury.

In Wisconsin, Judge Hubbell, for corrupt conduct in office.

None in New York down to the adoption of our present Constitution. Since that time but one, John C. Mather.

It must, we think, be evident, that this power of impeachment, far-reaching and extensive as it may be, vested exclusively as it is in one single body, and that body having in addition its other appropriate and important legislative and judicial duties to perform, is not of itself either sufficient or appropriate for the multitudinous cases of official dereliction that may exist among the tens of thousands of officials in our own State, and which require and demand the instant removal of delinquents, by summary process, for the protection of the public interests.

And this was well understood in the convention which framed our Constitution. They recognized the remedy by impeachment, wide-sweeping and tremendous as it was, too unwieldy in its movements, too dilatory in its progress to meet the exigencies that had arisen, and that were thereafter to arise. They knew that no removal from office by impeachment had ever been made in all the past history of the State, and that many offices *had* been vacated for cause by other methods. They recognized the fact that official tenures would expire before an impeachment could drag its slow length to a conclusion.

That many offenses were conceivable, sufficient to call for prompt removal, although they did not rise to the height of impeachable offenses. That many circumstances would arise, not involving moral guilt at all, and which would be beyond the reach of indictment or impeachment, but which, nevertheless, would imperatively demand the removal of an officer, that public interests might not be imperiled. An officer might become insane, idiotic, or incapacitated by evil habits from the proper discharge of his official duties.

And recognizing these facts and pursuing the general line of policy marked out in the previous constitutional and statutory legislature of the State, they made in the new Constitution itself, and gave authority to the legislature to make provision for the summary removal of inefficient and derelict officials, whenever the public interests might require it.

I now come to the subject of *removal of officers, otherwise than by impeachment.* The Senate and the House of Assembly has each the power to expel any of its members. (1 R. S., Edward's Ed., p. 152, § 12.)

But no member shall be expelled until the report of a committee, appointed to inquire into the facts alleged as the ground of his expulsion, shall have been made.

The same, or similar provision is contained in the Constitution of the United States, and in most of the State Constitutions which I have been able to examine; and it is a power which has been not unfrequently exercised.

Wm. Blount, a Senator of the United States, while an impeachment was pending against him, was expelled by the United States Senate, and removed from his office.

Ample provision is thus made for the prompt removal for cause

of all legislative officers, by a summary proceeding, involving the action of no other person or body than the body of which he is a member.

State Treasurer.

Cons., Art. 5, §7: The Treasurer may be suspended from office by the Governor, during the recess of the Legislature, and until thirty days after the commencement of the next session of the Legislature, whenever it shall appear to *him* that such Treasurer *has in any particular violated his duty.*

The office of Treasurer, or of any other collector or receiver of public moneys appointed by the Legislature or by the Governor and Senate, or by the Governor, except those officers for whose removal provision is otherwise made by law, may be declared vacant by the Governor, in case it shall *appear to him* on the report of the Comptroller that such Treasurer or other officer *has in any particular, willfully violated his duty.* (1 R. S., E. E., p. 112, sec. 29.)

Cons., Art. X, § 1, says: "Sheriffs, clerks of counties, register and clerk of New York, coroners and district attorneys, are elective, and hold their offices for three years. The Governor may remove any officer in this section mentioned, within the time for which he shall have been elected, giving to such officer a copy of the charges against him, and an opportunity of being heard on his defense."

The same provision was in the Revised Statutes. (1 R. S., E. E., p. 113, sec. 44.) And provision was made in sections 45, 46, 47 and 48, by which the Governor, in his discretion, might direct the district attorney to conduct the examination of the witnesses on behalf of the State. That the testimony might be taken before the county judge, and certified by him, to the Governor. This reference was to take and report the testimony alone, without any expression of opinion as to the truth or falsity of the charges.

By 1 R. S., p. 104, sec. 6, superintendents of canal repairs are appointed by the Canal Board. Either of the acting Canal Commissioners may remove any of the superintendents.

§ 7. Collectors of canal tolls shall be appointed by the Canal Board. Shall hold offices one year, but may be removed at any time by such board.

§ 8. The Comptroller also has authority to remove any of the collectors at his pleasure.

By 1 R. S., E. Ed., p. 112, sec. 38, all officers who are or shall be appointed by the Governor for a certain time, or to supply a vacancy, may be removed by him.

§ 40. All officers appointed by the Governor, with the consent of the Senate, may be removed by the Senate on the recommendation of the Governor.

Counselors, solicitors and attorneys may be removed or suspended by the several courts in which they shall be appointed, but, subject to such removal or suspension, they hold their offices during life. (1 Edmonds' R. S., p. 99, sec. 23.)

§ 24. Any counselor, solicitor or attorney may be removed or suspended who shall be guilty of any deceit, malpractice or misdemeanor, but not until a copy of the charges against him shall have been delivered to him by the clerk of the court in which the proceedings shall be had, and an opportunity shall have been given to him of being heard in his defense.

By the act passed at the last session of the Legislature, February 26, 1866, entitled "An Act to create a Metropolitan Sanitary District and Board of Health therein," it is provided, in section nine, as follows:

"Any member of said board may at any time be removed from office by the Governor, under the provisions of the laws relative to the removal of sheriffs from office; which provisions are hereby extended so as to relate to the members of said board.

"But before such removal, such member shall be served with specific charges, stating the dereliction from duty complained of; and shall be afforded an adequate opportunity to publicly answer the same, and to make his defense thereto, upon reasonable notice to be given to him.

"And, on the application of the Governor or the party charged, any judge of the Supreme Court shall have as full power and authority to compel the attendance and examination of witnesses touching such charges and defense, at the place and time when the aforesaid proceedings or hearing may take place, as is given in the 14th section of said act. And it shall be the duty of said judge to exercise such authority, and to take or supervise the taking of such examination, to be used on the hearing of such charges and defenses."

(The act provides for the appointment of these officers on the nomination of the Governor, with the consent of the Senate.)

Three Commissioners of Police appointed by the Governor, with consent of Senate, to hold their office six years.

Section four provides: Any one of the Commissioners may be at all times removed by the Governor, under the provisions of statutes relating to the removal from office of sheriffs; which provisions are hereby extended so as to relate to each one of said Commissioners.

§ 1. In all cases where the Governor is or may be authorized by law to remove sheriffs and other officers, he may direct that the testimony may be taken, and the examination of the witnesses may be had before himself, or before a commissioner appointed by him for that purpose, with the same effect as the same may now be taken and had before a county judge. * * * *

§ 2. In such case the Governor may direct the district attorney of the county where the officer sought to be removed may reside, or the attorney general, to conduct the inquiry and examination, and the same shall be had at such place in the county where the officer sought to be removed shall reside, as shall be fixed by the Governor or Commissioner, and the said inquiry and examination shall be upon the like notice, and the District Attorney or Attorney General shall have the like power to issue subpœnas to compel the attendance of witnesses, &c., and the officer sought to be removed shall be entitled to the process of subpœna in the like manner as now provided by law in such cases before the County Judge.

§ 3. The Governor or Commissioner, as the case may be, shall have the same power to administer oaths and affirmations, to enforce obedience to subpœnas, and to compel witnesses to be sworn and answer, and to do all other things requisite, as County Judges now have by law in like cases; and in case such inquiry and examination shall be had before such Commissioner, the same shall be taken and certified and transmitted to the Governor in the same manner as is now provided by law in like cases before a County Judge.

§ 4. False swearing made perjury.

§ 25. The removal or suspension of any counselor, solicitor or attorney by the Supreme Court or the Chancellor from their respective courts, shall operate as a removal or suspension in every court in the State.

I beg leave to detain the Senate a moment in the consideration of these provisions, as we think they will throw much light upon the proceeding now before the Senate:

1st. As to its true character.

2d. As to the form of the proceedings.

These provisions were upon our statute books at the time of the adoption of the Constitution of 1846, and were well understood. Removals and suspensions under them had not been unusual.

Now, notice that under this statute an attorney and counselor is classed among judicial officers. He is required to take and subscribe the constitutional oath of office. Unlike other officers of the State, he is required by the statutes of the State, and the rules of the court, to prepare himself for the faithful discharge of his official duties by long, expensive and systematic course of study.

2. He is required to sustain a satisfactory examination, at the hands of the appointing power, of his legal abilities and acquirements, and unless such examination is satisfactory, however long and arduously he may have prosecuted his studies, he is unhesitatingly rejected.

3. Unlike all other officers, he is required in advance to satisfy the appointing power that his moral character is good. And although the certificate of a reputable counselor, or some other reputable person known to the court, may be accepted in proof of this, yet this is not conclusive; and the court, the appointing power, have declared by general rule that they must be satisfied on this point after a full examination and inquiry.

No similar guards or precautions are taken in the appointment to any other office whatever.

4. The office is for life subject to the power of removal and suspension under the provisions I have cited.

1st. As to the effect of the removal.

If the removal of an officer by any of the provisions I have cited can be considered as a punishment visited upon an offender for a crime or misdemeanor committed by him, then certainly the removal of an attorney, above any other officer, is a punishment; the investigation of his guilt or innocence is a trial, technically; the decision for his removal is a judgment. Such a trial we should certainly expect would be hedged about by all the forms and ceremonies which appertain to the criminal courts. And the judgment of the court, which shuts him out of all those fields of labor in which his life has been spent, and where he has looked for the

means of his support; and after he has become unfitted by his education, his habits of thought, and his associations, from the successful prosecution of any other business, this judgment, we say, must be a punishment inflicted upon the offender for his misdeeds, if in any sense or ever removal of an officer for cause is a punishment.

But is this so? Has an attorney who has been guilty of a misdemeanor, and removed from his office, been tried for his offense? And is he in his exclusion from his business, and in the loss of reputation, enduring the punishment inflicted by the law for his offenses? May he plead when an indictment is found against him that he has been once tried for the same offense? True, a copy of the charges have been served upon him; true, an opportunity has been given him to be heard in his own defense, but he has not yet been tried. He has not yet been punished for what he has done. He has only been *put in a position where he cannot so offend again.*

And this we say is the true light in which all removals from office for cause, or upon charges, should be regarded as a remedy by which *the public are to be protected from future detriment and disgrace.* It has reference wholly and exclusively to *the public interests and the general welfare.* It is an exercise of that sovereignty which belongs to the people, vested in that court, Senate, or other body to which this power has been conferred by the people.

In confirmation of these views of the real nature of a proceeding for removal, I quote the remarks of the Chancellor in 3 Paige in granting an order for the removal of one Peterson, a solicitor. (3 *Paige*, 312.) The Chancellor says:

"Solicitors, attorneys and counselors are admitted to practice and are entitled to special privileges under the laws of the State, for the purpose of enabling them to be useful to their fellow citizens in the ascertainment, prosecution and defense of their legal and equitable rights. And if such officers *abuse the trust* which has been thus reposed in them, and conduct themselves in such a manner as to become a nuisance rather than a benefit to the community in which they reside, it is the duty of the courts in which they practice to remove them from their office. As well (not to punish them for their misdeeds) for the protection of the public, as to preserve the character of an honorable and useful profession. "And," the Chancellor adds: "this court, so long as I have the honor to preside over it, will not hesitate to discharge that duty

fearlessly whenever a proper case for the exercise of the power is presented."

And so holding poor Peterson guilty, as charged, of forgery and deceit, he went over. And every man who reads the case will say amen.

Out he went, not only from the Chancellor's court but out of the Supreme Court, out of the court of errors and of impeachment, out of the county court, out of every legal court in the State, and that upon the adjudication of one man.

Secondly—Mode of proceeding:

But how was Peterson removed. He was an officer, as we have seen, in the enjoyment of an office of trust, honor and emolument. In for life. The charges against him were that he had forged the signature of the deputy register to a paper purporting to be a copy of a decree of divorce, and of deceit in palming off this paper upon a party as a genuine decree of the court.

The charges were serious in their nature, and serious in their consequences. The investigation into the truth of the charges devolved upon the court, and was, if you please, a trial. How was it conducted? According to the law as laid down in the statute books and as understood by the Chancellor, who was not in the habit of mistaking his practice.

According to the argument which has been put forth here with so much earnestness and zeal on behalf of this respondent, here was a case where a man was to be put upon trial for the crime of forgery, and to be punished.

We should expect to find here if any where as much of form and ceremony as are observed in the court of sessions upon the trial of a man for petit larceny.

We should expect to find a preliminary investigation, by one body, in the nature of a grand jury presenting their determination, and another and separate body to try and determine the issue. Should we not? We should look for an indictment or something in its nature, from one source, and a final judgment thereon after a full trial upon the merits, from quite another.

What was the process?

A petition and affidavits, were presented to the chancellor, setting forth the facts.

The chancellor granted an order to show cause, why the solicitor should not be removed, and directed a copy of the order and

of the charges to be served upon him. Upon the return day named in the order, the solicitor presents his defense in the form of opposing or counter affidavits, and upon the examination of these, the order of removal was made. A simple and ordinary proceeding and the ordinary process by which officers of this class are removed.

The consequences of the removal might be ever so serious to the party implicated, it might affect his reputation through all time, and make his name a bye-word and a reproach, but in and of itself it involved no punishment which the law recognizes as such; inflicted in the eye of the law no penalty. It was not a trial of the *man* upon an indictment for forgery, and the decision of this tribunal did not protect him from the trial and punishment which fell to the lot of other like criminals.

I note one other provision in the Constitution in this connection, because the proceeding is analogous to that which we have just considered.

Const. Art. 6, § 17. Last clause of the section says: Justices of the peace, and judges or justices of inferior courts not of record, and their clerks, may be removed after due notice, and an opportunity of being heard in their defense by such county, city, or State courts as may be prescribed by law, for causes to be assigned in the order of removal.

And by subsequent legislation it was enacted that these officers should be removed as provided by the Constitution by the Supreme Court at any general term thereof.

1. The removal is made by an order of the court.
2. The party must be notified.
3. He must have an opportunity of being heard in his defense.

I am not aware that any removals of officers of this description have been made under these provisions; but it is quite probable that the mode of proceeding would, in such cases, be analogous to that for the removal of an attorney, by an order to show cause, and if the examination of any disputed question of fact became necessary, it be in the power of the court to order a reference to take the testimony.

Judges of Court of Appeals and Justices of Supreme Court (Constitution, Art. VI, § 11), may be removed by concurrent resolutions of both Houses of the Legislature, if two-thirds of all the members elected to the Assembly, and a majority of all the members elected to the Senate concur therein.

Copy of the complaint to be served, and the party to have an opportunity to be heard in his defense.

Judges of county courts, surrogates, recorders, and other judges of inferior courts of record, may be removed by the Senate on the recommendation of the Senate. But no removal shall be made unless the party complained of shall have been served with a copy of the complaint against him, and shall have had an opportunity to be heard in his defense.

I have thus grouped together all of the constitutional, and many of the legislative provisions for the removal of officers within this State for the purpose of aiding us in an examination of the true nature, object and meaning of the proceeding at bar, and for the purpose of guiding us in its further progress, and we say that this summary shows, that the people of this State have wisely and prudently guarded and doubly guarded themselves against injury and prejudice at the hands of corrupt and dishonest, or ignorant and imbecile officials. We have shown you:

1. That all civil officers are impeachable for impeachable offenses. That this remedy is by a formal trial, in a court of criminal jurisdiction having authority not only to remove from office, but to punish. That its judgment would be a bar to another trial in any other criminal court, except for the express provision of the Constitution, and the Governor could pardon except for a like prohibition.

2. That in addition to the process by impeachment provision is made by the Constitution or by law for the removal simply of all other important civil officers, and that such removal, whether at pleasure or for cause, is not in the view of the law in any sense a punishment for crime, but that its object and end is the future protection of the rights of the citizen.

3. We have seen that removals may be made at the pleasure of the appointing power. Officers appointed by the Governor, may be removed by him, for any cause or without cause. Appointed by the Senate, upon the nomination of the Governor, may be removed by the Senate upon the recommendation. In some cases the recommendation must state the grounds of removal, but no provision is made for any hearing or defense. Others are removed upon charges served, and notice and a day in court to defend.

Let us examine more particularly the provision for the removal of county judges.

By the first Constitution of this State, the first judge of the county held his office during good behavior, or until he attained the age of 60 years.

By the Constitution of 1822, Art. 5, § 6, it was provided that the judges of the county court (who were appointed by the Governor, with the consent of the Senate) and recorders of cities shall hold their offices for five years, but may be removed by the Senate on the recommendation of the Governor, for causes *to be stated in such recommendation.*

By the Constitution of 1846, Art. 6, § 11, judges of the county courts may be removed by the Senate on the recommendation of the Governor. But no removal shall be made, &c., unless the party complained of shall have been served with a copy of the complaint against him, and shall have had an opportunity of being heard in his defense.

To effect the removal, these things must concur:

1. The Governor must recommend the removal.

2. The officer must be served with a copy of the complaint against him.

3. He shall have an opportunity of being heard in his defense, i. e., he must have notice.

4. The Senate must concur in the recommendation.

Now while it may be true that we are without precedent to guide us in the removal of an officer in which *all* of these various constitutional provisions are required to be observed, yet it is equally true that removals from office have been made or attempted not unfrequently in our own State, or under the general government, or in sister States, under constitutional or statutory provisions identical in form or substance with one or the other of the requirements above enumerated.

Take the first particular mentioned in connection with the last.

The Senate may remove upon the recommendation of the Governor. Suppose this was the only thing requisite to the removal of this officer, would there be any difficulty about it, any doubt about its meaning, any thing strange or foreign to the ordinary duties of the Senate and Executive ?

Why a large class of officers are removable in just this way, by the Senate on the recommendation of the Governor. All those officers who receive their appointment at the hands of the Governor with the consent of the Senate, are so removable as we have seen.

It is simply the censure of the appointing power.

In the one case the Governor nominates to an office and the Senate concurs.

In the other the Governor recommends a removal and the Senate concur.

And so the statute couples the two things together.

Whenever any person nominated by the Governor shall have been appointed by the Senate to any civil office, or any officer shall be removed by the Senate on the recommendation of the Governor, it shall be the duty of the clerk of the Senate immediately to deliver a copy of the resolution of concurrence in such nomination or recommendation, certified by the President and clerk of the Senate to the Secretary of the State, and another copy certified by the clerk to the Governor (1 R. S. p. 108, sec. 12).

§ 15. When such appointment is made or any person shall be superseded in office, the Secretary of State shall send such commission or supersedeas by mail or otherwise to the clerk of the county wherein the person so commissioned or superseded shall reside.

Justice Cowen says in *The People vs. Carrique*, (2 Hill, 100), the statutes declaring that certain officers shall hold during a certain term, subject to removal by the Senate on the recommendation, do but adopt another mode of expression for saying that the office shall be holden at the pleasure of the Governor and Senate, p. 98. The defendant held his office subject to removal by the Senate on the recommendation of the Governor. I think the exercise of this power to recommend removals by the Governor need not be accompanied with the assignment of any cause. The power both in the Governor and Senate is legally naked and absolute.

Justice Cowen in this case went further than the court, and held upon various authorities which he cites, that the nomination by the Governor and the concurrence of the Senate, of the relator to the office held by the defendant, worked by implication of law the removal of the latter, without any recommendation by the Governor.

The remaining power, he says, as clearly indicated their pleasure to remove by making a new appointment, as they would have done by an express recommendation of removal by the Executive and the concurrence by the Senate.

Under the General Government we understand very well that this principle is fully recognized, and the nomination of a successor of itself is a removal.

What then is the motive and effect of a recommendation of the Governor for the removal of an officer?

Its office is merely to set the Senate in motion. It is to place the Senate in the same position precisely, with the same power and authority to act, as if the Constitution had conferred the power of removal solely upon the Senate without the intimation of the Governor.

There is nothing in the Constitution or in the statutes that prescribes what shall be the form or language of this recommendation. There is no provision for any preliminary hearing before the Governor, no preliminary examination by him of the evidence, *ex-parte* or otherwise, no hearing of the defendant before him.

He has the same power, the same authority to recommend a removal under the provisions of this section, as in the removal of these officers who are removable at pleasure by the Governor and Senate.

The Constitution does not say that no *recommendation* of removal shall be made unless the party complained of is served with a copy of the complaint, and he has had an opportunity to be heard. But that no removal by the Senate shall be made, until these things have been done. The recommendation is made by the Governor from such motives, and upon such information as to him seems sufficient, under his own sense of responsibility as a public agent, and the solemnity of his official oath. And when once such recommendation has been given, its mission has been accomplished. And the Senate, we repeat, stands on the same position precisely, in respect to its jurisdiction of the subject matter of the removal as if the language of the Constitution was: County Judges may be removed by the Senate, but no removal shall be made, unless, &c.

The Senate in this case, by their rulings heretofore, have received from the Governor a recommendation of removal of this respondent, and the whole matter is in the hands of the Senate. For the extent and nature and limitations of your proceedings, you are to look at the provisions of the Constitution, the statutes of the State applicable to this proceeding or proceedings analogous to this, not at all to the recommendation of the Governor, or communications from any other officer or department of

government whatever. If my views of the nature and effect of the recommendation of the Governor are correct, you stand here now with full power to remove this man from office, preserving in good faith, and with liberality, all these constitutional protections to which he is entitled. You may remove; but before you remove him, he shall be served with a copy of the complaint against him, and he must have an opportunity of being heard in his defense.

These requirements are not obscure or unfamiliar in practice.

When an attorney is removed by the Supreme Court, at general term, a copy of the complaint must be served on him, and an opportunity is given him to be heard.

When a district attorney, sheriff, coroner, county clerk or other officer removable by the Governor upon charges, is thus sought to be removed, a copy of charges is to be served upon him, and he must have an opportunity of being heard in his defense. These proceedings are all familiar and intelligible.

I have cited and commented upon one reported case which resulted in the removal of an attorney. The investigation of official misconduct by the Governor and the proceedings therein are quite familiar.

A copy of the complaint must be served. What is the complaint? Why it is a statement of the misconduct complained of; a statement of the charges which are made against the official, and for which his removal is sought.

They may be the same as were presented to the Governor, they may be charges framed in the Senate, but wherever and however they originate, the Senate, before they can remove, must serve a copy upon the party.

Your record shows that this has been done; that a copy of the charges have been served; that the party has had notice; that he has filed his answer to the charges, in the most solemn form and manner, denying their truth.

How will the Senate determine the truth of the charges thus alleged on the one hand and denied on the other.

In the analogous proceeding before the Supreme Court, for the removal of an attorney, we have seen that the testimony was presented in the form of affidavits, and the court could order a reference to take and report the testimony.

We have seen in the analogous proceedings for the removal of district attorneys and other officers, by the Governor, the statute has given to the Governor the power to refer the matter to the

county judge, or to a commissioner for the purpose of taking the testimony of the witnesses, to be reported to the Governor.

And we suppose the Senate has the same authority here. They might have referred the taking of the testimony to the body of the Senate; to a select committee, or to one of the standing committees, and the prosecution have always been ready and desirous, and have always professed themselves ready and desirous to present their proofs in support of these charges, wheresoever and whensoever the Senate might direct.

For what causes may an officer be removed.

I have endeavored to show you that in our own democratic form of government "all offices are positions of public trust, that they are established and filled," in the language of Judge STORY, "not to gratify private interests and private attachments; not as a means of corrupt influence or individual profit, but for purposes of the highest public good; to give dignity, strength, purity and energy to the administration of the laws.

That all officers are public agents appointed or elected upon the presumption of their honesty, faithfulness and capacity to carry out and accomplish these purposes, and subject always to the power of removal, incident to the particular offices which they may hold.

That no man may rightfully or properly lay claim to any office. That a removal from office (except by impeachment) is not a punishment inflicted for misconduct, but has reference solely to the future protection and preservation of the public interests. That the investigation of the propriety or wisdom of such removal is not the trial of an offender for his crime or misdemeanor.

It will be noticed that in the various constitutional and statutory provisions which I have cited, relative to the removal of officers, no declaration or description is given or attempted, as to what shall be sufficient cause for a removal.

And there is good reason for this omission, so long as human nature remains as it is, imperfect and liable to err, so long as there remain new temptations, new ways of abusing power, of abusing trust, of practising corruption and misconduct in office, any attempt to define by law what should be cause for removal, would be futile and fraught with more injury to the public interests than can well be imagined.

No attempt even has been made to define and declare what are impeachable offenses, except by using language which is itself undefined, whose meaning is undetermined and undeterminable. Mal and corrupt conduct in office, high crimes and misdemeanors. What language could be more general or capable of a wider variety of application.

Under the U. S. Constitution, whose language in this regard is almost identical with that of our own State, Story says, § 799: Congress have unhesitatingly adopted the conclusion that no previous statute is necessary to authorize an impeachment for any official misconduct.

And in the few cases of impeachment which have hitherto been tried (the four which I have mentioned), not one of the charges has rested upon any statutory misdemeanor. Not one of the offenses charged was indictable.

The impeachment of Judge Addison, of Pennsylvania, for which he was removed from office, was for no offense recognized by law—no violation of any statute. And impeachments in England have a still wider and more extensive application. Offenses not defined or definable by any law, many of a purely political character, have been deemed worthy of this extraordinary remedy; and the English Court of Impeachment, it will be remembered, had jurisdiction not only to punish by removal and disqualification, but by fine, imprisonment and death. And if no description or definition is or can be given beforehand of those offenses in official stations which may be visited with removal and punishment *a fortiori*, can none be given of the thousand acts and omissions which might justify and require the removal simply?

There is but one test, and there can be but one, and the application of this test is confided by the people to the wise and enlightened judgment and discretion of the person or body in whom the power of removal is vested.

The office of county judge of Oneida, like all other civil offices in the State, was established for the protection of the public interests. Has it been administered for the protection of these interests?

It was established for purposes of the highest public good. Has it been administered for purposes of the highest public good?

It was established and should be filled so as to give dignity, strength, purity and energy to the administration of the laws.

Has the character of the incumbent, private and official, and his

discharge of the duties of his office been such as to give dignity, strength, purity and energy to the administration of the law?

This is the test, and if, in the exercise of your calm, unprejudiced and deliberate judgment, you can say, upon the testimony that will be spread out before you, that the conduct of the county judge of Oneida county, and his administration of the duties of his office, have been thus pure, honest and faithful we would be the last persons on earth to ask for his removal.

Is this test too stringent? Shall nothing be pardoned in the language of my friend to the imperfections of human nature? Yes, much.

But what if we show you that this respondent, not once or twice, but habitually, treats this office and its duties but as stepping stones to the advancement of *his* private interests, to gratify his private attachments; that he uses the power and influence which the people have entrusted to him for their good, for *his own* individual profit.

But to return: The test I have given by which to determine in any case, as to the necessity, wisdom and propriety of the removal of any officer from his trust, I have said was the only one that could be applied.

It is sufficiently comprehensive to meet the case of every public agent, however he may have secured his trust, whether by appointment or election, directly or indirectly, from the hands of the people; whatever may be the character of the duties he may be called upon to perform, whether executive, administrative or judicial; it is sufficiently elastic to reach every grade, measure, degree and variety of mental, moral and physical unfitness, that can be seen, felt or imagined. It varies to meet the peculiar requirements of each particular office.

It demands of every public agent that he shall be honest; that he shall be faithful; that his private and official conduct shall be such as to maintain and preserve, in all their purity, energy, efficiency and dignity, the administration of the laws, so far as their administration is confided to his care.

But it may be said this is no test at all; it is simply leaving the whole matter to the whims, caprices or prejudices of the removing power. To the wise, enlightened, unbiased judgment of the removing officers acting under a deep sense of their individual responsibility as public agents, under the solemn obligations of their official oaths; under a lively sense of their own accountability for the performance of this as of other public duties, it is left. The

constitution leaves it there; the statutes leave it there. This body is authorized to expel a member.

For what causes may you exercise this power? and remove one of your number from his office?

Can any statute define them? Can they be enumerated, item by item, what he may do, and what he may not do?

Can the judgment, the discretion of any other body or person be substituted for your own?

To you has been confided by the Constitution, the power of removing from their offices, upon sufficient cause being shown, the judges of county courts.

It is as much a part of your official duty as Senators, as are the ordinary duties which more usually occupy your attention.

It is a power entrusted to you by the people, to be exercised if in your judgment the public good or the highest interests of the people demand it. It is to your judgment, your discretion, that the question of the fitness or unfitness of this respondent for the position he occupies, is wholly submitted. And whatever may be the nature of the charges that may be brought against such an officer, whether they be of such a character as to render him liable to an impeachment in another tribunal or not; whether they be such as would subject him to trial upon an indictment in a criminal court or not; or whether they relate to mental or physical incompetency, simply without any element of guilt whatever, your power, your duty remains the same. It is a power confided to the Senate, and to no one else.

I now proceed to the charges themselves as they have been framed and read before this body. The first two charges, as read yesterday, are set forth in these words: "First, that the said Geo. W. Smith, being such judge as aforesaid, and being authorized by the laws of the State of New York to decide upon the claims of citizens of said county to exemption from service in the militia of the State, did, in numerous instances, draw up as attorney or counsel for the applicants for such exemption the necessary papers to secure such exemption, and did receive pay therefor as such attorney and counsel, knowing that the several cases so prepared were to come before him for examination or decision thereon, and afterwards passing upon and deciding the same in his judicial capacity. This was done at different times and dates during the years 1862, 1863 and 1864, at the city of Utica, in the said county of Oneida, the precise dates and names being unknown."

The second charge is similar to the first one, except that it alleges that he permitted Henry T. Utley, his law partner, as attorney and counsel for applicants for such exemption, to prepare the papers therefor, and to receive pay therefor as such attorney and counsel, he being entitled to and receiving, as such partner of the said Utley, a share of such fees and charges, and knowing that the several cases so prepared by the said Utley were to come before him for examination and decision thereon, and afterwards passing upon and deciding the same in his official capacity.

To understand the pertinency of these charges, it will be proper to call to mind one or two provisions of the statute.

One of the members of the Convention that framed the present Constitution of this State, and a member of the committee to whom was referred the reorganization of the judiciary, Hon. Charles P. Kirkland, in speaking of the defects and evils of the old system, remarks:

"The attention of the committee have also been bestowed on some other evils.

"The mode of remunerating judicial officers by fees and perquisites of office is fraught with mischief. Its tendency is corrupting, demoralizing and degrading.

"It has always the *appearance*, and sometimes it is feared *the effect* of converting the judicial functionary into a vendor of justice, and it has caused very numerous and just complaint. It is the unanimous opinion of the committee as we trust it will be of the Convention, that all judicial officers of the higher grades shall be prohibited from receiving any fees and perquisites of office."

The Constitution, VI., 20, provides: That no judicial officer except justices of the peace shall receive to his own use any fees or perquisites of office.

It is further provided by statute. (Laws 1830, chap. 320, § 38,) "No judge, commissioner or other judicial officer, shall demand or receive any fees or other compensation for giving his advice in any matter or thing pending before such judge or officer, or which he has reason to believe will be brought before him for decision, or for drafting or preparing any papers or other proceedings relating to any such matter or thing, except in those cases where fees are expressly given by law to such judge or officer for services performed by him."

By another statute, 1857, ch. 564, § 1: County judges shall not hereafter take or be allowed any fees for services rendered by

them, except for such services as may be performed by justices of the peace or commissioners of deeds.

§ 2. No county judge shall receive or be allowed any greater fees for services rendered by him than are now allowed by law to said justices of the peace or commissioners of deeds.

By the Constitution he is to receive an annual salary, to be fixed by the board of supervisors; and all other fees and perquisites, except for acknowledgments and affidavits are entirely abolished.

One other statute bearing upon the 2d charge should be noted. 1847, ch. 280, § 52:

"No partner or clerk of any judge or officer, shall practice before him as attorney, solicitor or counsel, in any cause or proceeding whatever or be employed in any suit or proceeding, which shall originate before such judge or officer; nor shall any judge or officer act as attorney, solicitor or counselor, in any suit or proceeding which shall have been before him in his official capacity."

Passing now to the statute of 1862, chapter 477, section 298, providing for the organization of the State National Guard, we find that there is conferred upon the county judge, officially, the delicate and responsible judicial duty of deciding upon the various claims for exemption from military service and from the draft.

§ 298. Any person so drafted may within five days after receiving notice of the same present to the county judge of such county his certificate of exemption, or other proof of his non-liability to military duty, which shall be duly verified; and if such county judge shall *decide* that such person is exempt, or not liable, he shall be discharged, *and another person drafted in his place*, &c.

The act did not authorize the county judge to receive any fees for his services.

With these provisions of the statute in mind, we proceed to the evidence which will be produced on this branch of the case. We shall show that upon the trial of Major John A. Haddock, in the summer of 1865, Judge Smith being sworn as a witness on the part of the defense, testified as follows in reply to questions put by the counsel:

Q. Were you as county judge commissioner to decide upon draft exemptions? A. At one time I was.

Q. When was it? A. In 1862.

Q. And under the State draft when more recently. A. For the last year.

Q. While Henry T. Utley, attorney, was your partner? A. Yes, sir.

Q. Did you and Mr. Utley at that time both make out papers for the exemption of men for the draft? A. We did.

Q. Papers which you passed upon? A. Yes, sir.

Q. And you and he shared the profits of it, did you? A. Yes, sir.

Again in answer to question by his associate counsel, and in explanation of his testimony, he says:

In regard to the matter of exemptions under the draft for the National Guard for this State, the cases referred to of papers drawn by Mr. Utley and myself were cases where parties came and stated their cases, and if found sufficient, the affidavits were drawn, and we charged them for the drawing. They could have got anybody else to do it, but if we did the work we charged for it.

Q. And these were cases passed upon by yourself? A. Yes, sir.

Now there are one or two suggestions that may be made in respect to this charge, and the proofs we will offer. The first is, that if this practice is allowable—

Mr. SMITH: It is not in order now to sum up the case upon the testimony.

Mr. WATERMAN: Very well. I am, perhaps, occupying too much time already, and I have no desire to take up more than is necessary. I will now proceed to a consideration of the third charge.

"That the said George W. Smith, being such county judge as aforesaid, and as such, under the laws of this State, having the controling voice in the appointment of excise commissioners in the said county of Oneida, did, with a view to his own personal advantage and gain, procure the appointment of Aaron W. Reynolds, George F. Weaver and Samuel P. Lewis as such commissioners; and did afterwards, to wit: in or about the month of February, A. D. 1865, with the same intent, procure from the commissioners so appointed, his own appointment, in writing, as the prosecuting attorney of the said board of commissioners, the same being a valuable office and appointment; that one Samuel J. Barrows, at and before such appointment of said Smith, held the said office under the appointment of the said board, and had discharged the duties thereof in a satisfactory manner; that the appointment of the said Smith was not published, but was kept secret; that afterwards, and on or about the 22d day of March, A. D. 1865, the said Smith sold the said office and appointment to the said Barrows for the sum of $500, which was paid by the said Barrows

and received by the said Smith therefor, and such appointment in writing given up to said Barrows and destroyed; that at the time of the payment of said money as aforesaid, and as a part of the same transaction, it was corruptly proposed and agreed by the said Smith that he would continue in office and re-appoint one of the same commissioners, viz.: the said Weaver, for the purpose of securing the said office to the said Barrows; that it was understood by and between the said parties, that by the sale and giving up of said office and appointment by the said Smith, the said Barrows would continue in said office and employment, and could secure his own re-appointment thereto, and has hitherto and still does so continue and has been re-appointed thereto. And it was further understood that said Smith was not thereafter to interfere with said Barrows in said office, but was to aid in continuing him therein, and securing the same to him."

Now, by reference to the act of April 16, 1857, we find the county judge with two justices has the power of appointing excise commissioners.

Session Laws, chap. 628, sec. 1, provides that there shall be appointed by the county judge and the two justices of sessions, or a majority of them, *of which the county judge shall be one*, in each of the counties of the State, three reputable freeholders, residents of the county, who shall be the commissioners of excise for their counties, and shall be known as the "Board of Commissioners of Excise."

Their terms of office was six years, and one to be appointed every two years.

Their general duty was to hear and determine all applications for licences to sell intoxicating and spirituous liquors within the county; to sue for and recover all fines and penalties for violations of the excise law in the name of the board, and generally to carry out and enforce all the provisions of the law.

The county judge in conjunction with either of the justices could make the appointment. The justices united in opposition to the judge were powerless. They could make no appointment. The judge had thus a controling voice in the appointment of these commissioners. The patronage was, in substance and effect, his.

The board were authorized by the law to appoint a clerk, and having capacity to sue and be sued, and required to prosecute offenders, they were by implication of law and from the necessity of the case authorized to appoint an attorney. In point of fact

the board had from its creation had an attorney, and the office in Utica was estimated to be worth some $1,500 a year. Samuel J. Barrows had held the office from the organization of the board, and performed its duties to their satisfaction. For violations of its provisions various penalties are imposed, differing in amounts, $10, $25, $50, and were recoverable by civil actions in the name of the board. Indictments found for violations of this law were triable in the court of sessions, in which the county judge presided.

It was also provided that whenever any judgment was recovered in a suit for penalty against any person who was licensed, for violations of the provisions of the act, the officer before whom the judgment was recovered was required to make a return thereof to the court of sessions, whose duty it was to revoke the license, and the person whose license was thus revoked was declared incapable of receiving a license for three years. There was no way provided for revoking a license once granted, except by the court of sessions, in which the county judge presided.

It should be borne in mind also, that in all civil actions brought by or against the board, in justices' court, an appeal could be taken only to the county court, held by the county judge alone; and that where the amount in controversy is $50, or over, an appeal involves a new trial, ordinarily in the county court.

The penalties imposed for violations of the law, being small in amount, the suits commenced by the attorney of the board would usually be in justices' courts, and from the judgment there entered an appeal lay first to the county court, and finally to the general term of the supreme court.

I have referred to these various provisions for the purpose of indicating, in a general manner, the impropriety and futility of attempting to unite in one person the functions of county judge and attorney of the board of excise, and as preparing the way for a better understanding of conduct complained of in our third charge.

The fourth charge is very much like the third. The proof we shall offer in this case will be mainly that furnished by Judge Smith himself in the testimony given on the Haddock trial; although we may desire, on some points, to call other parties who were engaged in the transaction.

We shall show by the evidence that Judge Smith drew up a paper revoking the authority of Barrows, and appointing Smith in his place. That he first procured the signature of Samuel P.

Lewis, one of the commissioners. Then applied to Weaver to sign it. Weaver demurred, stating that the board were satisfied with Barrows; that the office was one which the county judge could not with propriety accept, and ought not to ask for. That Smith pressed his claim with great earnestness and persistency, said he was poor and needed the money, and finally, though with great reluctance, Weaver signed the paper.

Of the three commissioners, Weaver was the one whose term would first expire.

The third commissioner was then induced to sign it. Smith served a copy of the paper on Barrows, by way of opening negotiations, and retired to await further developments. Finally after some delay he sent for Barrows to come to his office and see him. Barrows went and saw him. Smith told Barrows that he should retain the appointment unless paid for giving it up. Barrows asked his price. Smith said $500. Barrows offered $200. And the negotiations closed for the present.

Smith frequently approached Barrows on the subject afterwards, when they met in the street and elsewhere. And finally Smith's terms were agreed to. Barrows told Smith he had made up his mind to pay $500, and then added: "But what assurance have I that you will let me alone and not interfere with me in the future?" Smith replied that he would re-appoint Weaver as commissioner. It was understood that upon Smith giving up the written appointment he held, Barrows would assume his old position, and would receive a formal re-appointment if he desired it. This was the understanding of Smith and Barrows with the commissioners.

Barrows said to Smith that when the money was paid Weaver must be present, and must know what the arrangement was, and what the money was paid for. Smith assented.

Smith and Weaver came together to Barrows' office. Smith then proposed to Barrows to form a partnership with him, or give him a part of the profits of the business. Barrows declined, and the arrangement which had been proposed was concluded. Barrows paid Smith $500. As Smith was counting the money he said in substance: "I am to give up the paper appointing me attorney, and am not to intefere with Barrows while I am in office, and I am to re-appoint you (Weaver), or keep you in the board while I am county judge.

The paper was handed to Barrows, and it was afterwards de-

stroyed. Barrows continued to act as attorney; he was re-appointed by resolution of the board at his own request. Weaver was re-appointed commissioner at the expiration of his term, and Barrows still continues to act.

The fourth charge I need not stop particularly to comment upon. It will be proved substantially by the testimony of Judge Smith; and it only differs from the Barrows transaction in this respect—that before procuring that appointment for himself, he desired that James J. French, an attorney at law at Utica, should be appointed as excise commissioner; that Smith should by his influence procure his appointment, and that he should enter into a law partnership by which French should enjoy one-third of the office (the whole being worth $1,500), and Smith retaining two-thirds for himself.

The hour of 2 o'clock having arrived, the Senate took a recess to 4 o'clock.

AFTERNOON SESSION.

The Senate re-assembled at four o'clock, and Mr. Waterman, on the part of the prosecution, proceeded with his opening.

MR. WATERMAN: Mr. PRESIDENT—I had proceeded, previous to the adjournment, to the consideration of the first four of the charges alleged against this respondent, and I have now a few words to say in reference to the next upon the list, which is the fifth. That charge is drawn with so much detail that I think that very little if any reference will be needed in explanation.

The fifth charge is set forth as follows: That at and before the time of the transaction, hereinafter stated and charged, one Henry T. Utley was the law partner of the said George W. Smith. That, on or about the fifth day of January, A. D. 1865, one Charles E. Norton was confined in the county jail of Oneida county, upon a charge of grand larceny. That the said Smith, being the friend of one Major John A. Haddock, then the acting assistant provost marshal general of the western district of New York, and, having authority in the premises, applied to and used his influence with the said Haddock to procure and did procure from him a special order that the said Norton should be mustered into the military service of the United States, and that the bounty to which said Norton would become entitled on such muster in said county

of Oneida, being the sum of six hundred dollars or over, should be paid to and retained by the said Utley, the law partner of said Smith. That upon procuring said order, and upon the application of the said Utley, the said county judge let the said Norton to bail—the said Utley becoming his surety, and thereupon, said bounty, amounting to six hundred dollars, was paid to the said Utley. That it was understood and agreed between the parties to this transaction that such bail bond was not to be enforced against said Utley, and that, in pursuance of such understanding, the said county judge retained the same in his own possession and control, and did not file the same in the clerk's office of said county, nor deliver the same to the district attorney of said county, as by law he was required.

The facts set forth in this charge, are also substantially admitted as alleged in the evidence and published defense of this respondent. And it will only be necessary for me to allude to one or two provisions of the law which have a bearing upon the case, and should be borne in mind in considering the evidence which shall be presented.

1. A judge of the county court has power and authority to let to bail in all cases triable in a court of general sessions.

2. Whenever any person is let to bail by an officer out of court, such officer shall immediately cause the recognizance taken by him to be filed with the clerk of the county in which the party bailed was imprisoned.

3. The admitting a criminal to bail and the approval of a bail bond is a judicial act.

4. The law partner of a judge is not permitted to appear and practice before him as attorney or counsel in any proceeding.

Let us look a moment at what was done:

1. This respondent, sitting as judge, entertained an application to let to bail, presented by Utley his law partner.

2. He approved a bail bond prepared and presented by his law partner, and his law partner being the surety on said bond.

3. He withheld this bond, given for the purpose of securing the attendance of the prisoner at the court at which he was to be tried, from its legal place of deposit; did not file it in the clerk's office; did not deliver it to the district attorney.

4. He admitted Norton to bail avowedly upon the condition that he would enlist, and for the purpose of enabling him to be mustered into the military service of the United States.

5. The provost marshal refusing to muster him, he writes two letters to the A. A. P. M. G. of the western division, Major Haddock, who was his personal friend, for an order to the provost marshal to muster the man in. The last letter was returned to the provost marshal's office with the required order indorsed on it.

6. The regulations then required a certain proportion of the local bounty to be sent forward with the recruit. He requested an order from Major Haddock that this man be mustered without any bounty being sent forward, which was granted.

7. He requested and obtained from Mr. Haddock authority to have this criminal mustered, the bounty being paid to Henry T. Utley, the judge's law partner. We shall insist that this respondent, in every one of these particulars, stepped beyond the limits established either by positive statute or the recognized proprieties of the judicial office. That he had no right to admit any criminal to bail upon the motion of the law partner, or to approve a bail bond presented by him as attorney. He had no right to admit Norton to bail upon *any* application for the purpose and upon the condition mentioned. He had no right to lobby with the officers of the General Government, and by means of his personal and official influence induce them to revoke or modify a general regulation established for the public good, at the instance and for the pecuniary benefit of his law partner. He had no right to destroy or withhold the bail bond from its proper place of deposit.

MR. WILLIAMS: Do you expect to prove that the bail bond is destroyed?

MR. WATERMAN: We do not know, sir. From the evidence which will be offered, it will appear that up to as late as June last it had never been deposited in the county clerk's office, or delivered to the district attorney, and whether it is in the judge's office or has been destroyed, we do not know.

MR. SHAFER: They have no suspicion that it was destroyed, they know better.

MR. WATERMAN: We say this official had no authority to apply to the officers of the general government to vary their general regulations for the purpose of admitting this criminal to bail for the purpose of allowing him to be mustered into the U. S. service. It will appear from the evidence that this respondent, when the enrolling board refused to admit this person as required, wrote once or twice, twice I think, to Maj. Haddock, who had authority to give such an order, to send forward an order to the

provost marshal of Oneida county that this man Norton should be admitted and mustered in, without any portion of the county bounty being sent forward as required by law, that bounty being retained by the person who gave the bail, Mr. Utley, the partner of Judge Smith; and the last letter that was sent came back with the required order indorsed upon it, and it was in pursuance of that that this Norton was taken out of jail, admitted to bail, the bail bond pocketed and the recruit sent forward. We say, in each and every one of these things this official exceeded what is the proper, legitimate and decent duty and authority of a judge. That is all I have to say in respect to the fifth charge.

The transaction just mentioned, connected with the bailing of Norton, very naturally introduces the narrative of events and circumstances detailed somewhat minutely in our sixth charge. The situation of affairs, at the time this narrative commences, was briefly as follows: In December, 1864, the last call for troops had been made by the President of the United States, 300,000 in all being required, and an order for a draft was expected. The credits to which the several counties in the State were entitled were not known to the public, and the quotas of counties and towns was as yet not understood, or at least not made public. The machinery of the draft, and the superintendency of the recruiting business generally, in the district embracing the county of Oneida, was in charge of an A. A. P. M. G., whose authority extended over the Western Division of the State of New York, and whose office was located at Elmira. All enlistments and credits for the different counties were reported through this office to the Provost-Marshal General at Washington. Major John A. Haddock had, about this time, received the appointment, and entered upon the duties of A. A. P. M. G., W. D. N. Y., at Elmira, having previously been provost-marshal at Buffalo. He had been for many years a personal friend of Judge Smith, had called upon the judge, at his office in Utica, and notified him of his appointment or his expected appointment. Lieut.-Col. Poole was, at that time or soon after, acting provost-marshal at Utica. The county judge had his office in Utica, and John D. Collins was his clerk or had a desk in his office. Aaron Richardson was a resident of Albany, and had been previously extensively engaged in furnishing recruits and substitutes, and was well known as a bounty broker. The people and supervisors of the county were thoroughly aroused to the necessity of speedy and vigorous action to

fill their quota and escape the impending draft, and local bounties were offered to the amount of $600 or $700. The exact quota of the county was unknown, but was generally supposed to be or that it would be some 1,200. Richardson, the bounty broker, understood, or soon learned, the friendly and intimate relations existing between Judge Smith and Major Haddock, and, from his past experience, he here understood that, to prosecute his business schemes successfully, he would require a friend at court who would be able to control or direct the enrolling board of Oneida county, if they should prove an obstacle. This being the situation of the parties, it was evident that if an arrangement could be made by which the local bounties could be retained at home by the recruits or the brokers, instead of being sent forward to Elmira—if an arrangement could be made by which the broker could receive the credit for his men notwithstanding their desertion, before or after reaching the rendezvous camp—if extraordinary facilities could be procured for mustering in men and enlisting them; if the broker could be privately informed, in advance of the public, what the true quota of the county and its sub-districts would be, and thus have an opportunity to contract for filling the quotas in gross; if all or any of these arrangements could be perfected, immense profits would result to the parties engaged in the business.

A word as to Smith's knowledge of the parties, and the position of affairs at this juncture. His knowledge of Richardson was that he was a bounty broker who desired to get things clean to the verge of the law, and beyond. He had known this to his own satisfaction, certainly, for several months. He knew that negotiations were pending by which Richardson was to take a contract for filling the quota of Oneida county at a gross sum. He had frequently talked the matter over with Richardson, and had talked himself with some of the supervisors about it. He knew that some other parties were to have an interest in the large profits to be made from that contract. His acquaintance with Haddock had been intimate and confidential, and had extended through a period of over fifteen years. He knew the extent of his influence with Haddock, and what he could do with him. He had tested it in the Norton case, and had had one or two confidential interviews with him at Utica. And we have a right to say that he knew Haddock's character then to be what it was proved to be from the subsequent developments.

Let us glance briefly at what was done. Major Haddock about the time of his appointment came to Utica, acquainted Judge Smith with his prospects or position, dined with him and they spent some hours together, late in the evening, at the office of Col. McQuade, who seems to have been present a part of the time. Richardson, the broker, commences his operations by clearing away as far as possible all obstacles that lie in the way. John D. Collins then occupying a part of Judge Smith's office, is employed as his clerk. Certain rules which had been established by the authorities at Elmira and Washington, proved a restraint. There was too much friction, *greater facilities* were needed, and Judge Smith is applied to, to obtain them from Major Haddock. In the matter of Norton, he had succeeded in procuring the order he wished, and he doubtless rated correctly his influence and power when he told Richardson he could get him any order from Haddock that he wanted, and would do so if he could make a good thing out of it. Two orders were needed at once. 1. Liberty and authority for Collins to make out enlistment papers in his own office. 2d. A modification of the regulation requiring five-eighths of the local bounty to be sent forward with the recruit. Upon Richardson's assurance that he will be well paid, the Judge undertakes to procure these orders. He starts upon his mission for Elmira, early in January, 8th or 9th; has as interview with Haddock and procures these two documents:

Headquarters A. A. Provost Marshal General and Superintendent of Volunteer Recruiting Service, Western Division State of N. Y., Elmira, Jan. 9, 1865.

Lt. Col. D. W. C. Poole, *Acting Provost Marshal, Utica, N. Y.:*

Colonel—I have the honor to inform you that I have acquaintance with Mr. J. D. Collins, of Utica, and know him to be a fine clerk. You will, unless good reasons are apparent to the contrary, treat enlistment papers made out under his direction and in his office, during the hurry of recruiting, as though made out by one of your recruiting clerks—taking care, however, to see that such papers are made out in conformity to law and regulations.

Very respectfully, your obedient servant,

(Signed) JOHN A. HADDOCK,

Major and A. A. P. M. G.

Headquarters A. A. Provost Marshal General and Superintendent of Volunteer Recruiting Service, Western Division State of N. Y., Elmira, N. Y., Jan. 10, 1865.

Lieut. Col. POOLE, *Acting Provost Marshal, Utica, N. Y.*

COLONEL.—The true construction of order No. 23, Department of the East, dated March 25, 1864, and promulgated from this office with an intimation that the spirit of that order would govern me in passing upon cases arising in this division, will be held by me to be, that if recruits or substitutes are fully informed by the Provost Marshal of their rights as to local and government bounties, they may thereafter assign to any person such portion of their local bounty as they may elect, not exceeding five-eighths thereof. The Provost Marshal should take pains to enquire fully into bargains made with recruits and substitutes, and hold both parties to a strict performance of their agreements, not forgetting that recruiting agents have rights that should be respected as recruits or substitutes.

I am, Colonel, very respectfully, your obd't serv't,

(Signed) JOHN A. HADDOCK,

Major and A. A. P. M. G. West. Div. New York.

Richardson, in the mean time, after starting Judge Smith upon his journey, sets out himself for Elmira, and has an interview with Haddock before the arrival of Smith, apparently for the purpose of taking the measure of the man Haddock. Smith on his return returns the letters to Col. McQuade, and from his hands they were delivered to Richardson.

MR. SHAFER: I would like to know if the counsel, by this statement, means to represent that they were delivered to Colonel McQuade, according to the testimony of the respondent, or whether he expects to prove that fact.

MR. WATERMAN: We expect to prove it.

MR. SHAFER: We understood the allegation to be that according to the evidence of the respondent, they were thus delivered to Colonel McQuade.

MR. WATERMAN: I consider it to be a matter of not the slightest consequence.

MR. SMITH: They were never delivered to anybody until after this investigation was commenced.

MR. SEDGWICK: They were delivered to Colonel McQuade as Mr. Smith swears, and the evidence will show; it is precisely as the counsel has stated it.

MR. SHAFER: The counsel is mistaken.

MR. WATERMAN: These preliminaries being arranged, the recruiting business went on swimmingly for some time, and down to the latter part of February there were various transactions between Major Haddock and Mr. Richardson. (I mention this as a part of my opening, and for information, but I do not propose to dwell upon it.) These are the transactions which form the basis of the charges against Major Haddock. Telegrams, letters and communications passed between them, which we claimed, and do claim, tended to show guilt and misconduct on the part of Major Haddock, and though it is necessary for me to refer to them in order to explain the subsequent charges relating to the suppression of evidence, I will not stop to read these different letters and telegrams. Some of them are set forth in the charge. They show there were concealed credits, amounting to 206, due to the county of Oneida, of which they had no knowledge. There were letters of recommendation to various provost marshals, signed by Major Haddock, commending to their kind consideration Mr. Aaron Richardson, and certain telegrams to Judge Smith, but none of them, I think, until down to about the first of March. During this time it would appear, from this respondent's testimony, that he was in communication with Haddock, receiving letters and money from him, and sending money and letters to him. These letters were destroyed, and what their contents were we cannot state. The payment of $2,000 occurred during this interval; sent $2,000 from Richardson to Haddock, by the hands of Collins.

On the 4th of February, Collins starts on his mission to Elmira with $2,000 in currency in his pocket, a token of affection to Major Haddock from his affectionate friend, Aaron Richardson. The money was carelessly produced by Collins, and presented to Haddock in the presence of third persons, at which Haddock subsequently complained. The money, however, was received and retained.

This, however, was but a part of Collins' mission. He was instructed to obtain a long list of additional favors and facilities in aid of the general enterpise.

1. Richardson wanted three of the recruits he had enlisted, and who were then in the rendezvous camp at Elmira, furloughed and sent back to him.

2. That a guard might be sent from Elmira to take charge of the Utica barracks and several others. Collins returned, bearing

from Haddock assurances that these matters should be attended to, and bearing also to Richardson from Haddock a sealed letter.

On the next day, upon the application of Major Haddock, Col. Tracey furloughed the three men mentioned by Collins.

The next day, also, Capt. Crandall was notified that Sergeant Sabine and other reliable men were sent to Utica as a guard.

Under the new arrangement, made upon the request and for the benefit of the bounty broker himself, by which he was entitled to credit the moment his men enlisted, whether they ever went forward or not; when at his demand they could be furloughed, at any time, and desert the service at their leisure; when guards were selected for the Utica barracks, and changed and withdrawn to suit his convenience, it was not surprising that desertions from the Utica barracks of Richardson's men were frequent. The three men he had procured to be furloughed had deserted. The trusty sergeant, Sabine, had generously opened the gates to eight or ten more, and the quota of the county was being much more rapidly filled up with credits than was the army with men. To check in some measure this fraud, and to secure as far as possible the actual forwarding of the recruits to the front, and to guard against desertion, Capt. Crandall had steadily required from Richardson a deposit of bonds to the amount of $550 per man, that the recruits presented by him should go forward to the rendezvous camp, and should not desert the service. A large number of his men had deserted and Richardson's bonds to the amount of $20,000 were thus tied up so that they were not available. Difficulty and misunderstanding grew out of it which threatened to break up and interfere with the entire operation. Richardson wanted his bonds restored to him. He wanted authority to have his men mustered in, in Utica, for other sub-districts in the western division and for localities in the eastern division. Haddock could not aid him in either of these respects without a consideration. On the 20th of February Collins was sent to Elmira to see what could be done, and whether the desired orders could be obtained. The interview was not satisfactory. Haddock complained that Richardson had broken faith with him, and had showed his letters, telegrams, &c., to other parties; had not been to see him as he agreed, &c. The orders were not obtained, but some encouragements were held out, that they might be granted, and the difficulties between them arranged if they could have a personal interview. A meeting was arranged

between Haddock and Richardson, to be had at Rome, on Friday, the 24th. They were both in Rome on that day, but owing to a misunderstanding of the time, they did not meet. Haddock complained of this as another symptom of treachery on the part of Richardson.

The following telegrams passed between them on the subject:

March 1. Richardson to Haddock.—I went to Rome Friday night to meet you. Sent Collins two hours before. Was much disappointed at not seeing you. Where shall I meet you and alone? A. RICHARDSON.

John A. Haddock to A. Richardson:

March 1.—I did not understand why you were not at Rome, nor do I now understand it. I was there four hours on Friday night. You will be obliged to come here as I am greatly pressed.
J. A. HADDOCK.

The same day, March 1, Collins was again dispatched to Elmira to explain the mistake, and to insist upon Haddock's granting the orders that were wanted.

In this interview Haddock seems to have lost his temper, and allowed Collins to see, what he and Richardson had both understood before, that the various letters, telegrams, and orders from Haddock, which Richardson had in his own hands, furnished a chain of evidence of corruption, fraud and criminality on his part, which could not be broken. He wanted to see Richardson, would do nothing, promise nothing until he saw him. An arrangement was made for a meeting between them at the Osborn House, Rochester, Saturday night, March 4th, of which arrangement Richardson was notified by telegraph. This was the position of affairs at the time Smith again appears upon the scene.

The difficulty between Richardson and Haddock, the falling out of these two confederates, had stopped for the present this precious scheme of fraud and corruption. The letters, telegrams and documents, in Richardson's hands, which he had received from Haddock, he retained in his own possession. And in default of the money wherewith to satisfy Haddock, these proofs of guilt were held in terrorem over his head. Moreover, Richardson wanted his bonds released, so that he could extend his operations, and facilities for working in other districts. But these bonds could not be had without the intervention of Haddock, unless he

would allow credits to the county for the men who had deserted. And this could not be brought about and the other facilities obtained unless Haddock could be satisfied. Both parties were at once suspicious of each other, and yet desirous of making some arrangement by which their schemes could be carried forward harmoniously and profitably to all concerned. The same obstacle which had disturbed and interfered with these projects, had affected the prospects of Smith, who had, as yet, realized nothing for his services and assistance in arranging matters. He too was "a prisoner of hope." On this same third day of March, when the arrangement was made by Collins for a meeting at Rochester the next evening between Haddock and Richardson, Smith was in Elmira and saw Haddock in relation to some bonds of McIntosh, that were tied up in the same manner as Richardson's. While there he learned from Haddock of the arrangement that had been made for the meeting next day at Rochester, and was informed of the object of the meeting. He was informed by Haddock of the use which Richardson was making, or threatening to make, of the documents he had in his possession, and of their nature and character more fully; and of his, Haddock's, desire to get possession of them. Smith was willing to undertake the work of suppressing or getting possession of them. One S. Floyd Hoard, who was a clerk in the office of Major Haddock, was furnished by Major Haddock with an order to Capt. Crandall to deliver the $20,000 bonds to him, Hoard, and was about starting for Rochester to meet Richardson with this order in his pocket. Hoard and Smith went to Rochester together. Richardson met them at the depot and they rode together to the Osborn House. Hoard and Smith occupied the same room, and the three were together that afternoon, evening and the next day, and Mr. Richardson paid all the bills at the hotel. At this interview, or soon afterwards, Smith assured Richardson that if Crandall should give up to Hoard, upon the order he held, the $20,000 of bonds in his hands, Haddock would deliver them to Richardson. Smith told Richardson he thought the difficulties between him and Haddock might be removed. We shall show that from the time of this interview at Elmira between Smith and Haddock, on the 3d of March, Smith was engaged in negotiating on behalf of Richardson to procure the release of the bonds in the hands of Capt. Crandall, and to procure him other facilities in his business from Haddock and others, and at the same time was in the employ of Haddock, to procure the sur-

render or destruction of the written evidences of guilt on his part, which were in the possession and under the control of Richardson. Nothing resulted from this interview at Rochester. The judge's recollection of what occurred seems to be quite indistinct. The next day, or the next but one, March 5th or 6th, Collins gave Smith $25 on behalf of Richardson, for his expenses, and started him back to Elmira to see Haddock, with a written memorandum of favors desired from Haddock (the same that Collins had tried to obtain before). Smith went to Elmira and saw Haddock, but could get no satisfaction. He would make no arrangement until he saw Richardson. A meeting was arranged to take place between them, time and place to be fixed by telegraph. On the 9th, Smith telegraphs Haddock, at request of Richardson, as follows:

> Send telegram to provost marshal, allowing A. R. to muster men for any place in the western division, and pay recruits at mustering office as state law may allow.
>
> Meet me at Osborn House, Rochester, Friday night. I will bring documents. All right. G. W. SMITH.

Which was responded to in the following telegram to Capt. C., dated March 9th:

> You are allowed and instructed to muster recruits to the credit of any sub-district in the western division, whenever presented. Your quota being filled, you have now time to help the other districts out. JNO. A. HADDOCK.

On the 10th Collins telegraphs him in the name of Richardson and Smith: "Meet us at Osborn House, Rochester, to-night, without fail. R. & S."

Collins went to Rome to send the telegram.

This meeting took place on the 10th at the appointed place. Richardson and Smith went up together, and Haddock and Smith occupied the same room, No. 107. Of this conversation from which so much was evidently expected by all the parties, brought about by two journeys to Elmira, etc., Smith professes he does not recollect one word. Some of the other parties have better memories and remember a little more distinctly what took place. We allege it was there arranged that the sum of $5,000 should be raised by Richardson to be paid into the hands of Haddock, for the purpose of procuring such favors from him as Richardson might need in the future, and as a part payment for such favors as

he had granted him in the past. At that interview, or the interview previous, Haddock had given these parties distinctly to understand that he would take no money from Collins, who was indiscreet, and he didn't want anything to come from Richardson, whatever, but whatever was sent must be sent through Smith, who seems to have been the only one who had the requisite amount of discretion and information. Richardson said that he promised.

MR. SMITH: We object to their reading any statement of Mr. Richardson here. It is no proper part of an opening and cannot be proper in any proceeding in this court.

MR. WATERMAN: It is proper if we propose to prove it.

MR. SMITH: When you state what you propose to prove, that is one thing, but when you get up to read a statement, it is entirely out of order. If the counsel says he proposes to call Mr. Richardson to prove it, that is a different thing.

MR. WATERMAN: That is a matter to be settled hereafter.

MR. SMITH: That is a matter you are bound in honor to state now, if you intend to call him you are bound to say so.

MR. WATERMAN: I will not refer to that interview between the parties until Judge Smith's testimony again speaks on the subject. Haddock and Richardson went together alone for a short time (as was very natural). They had a conversation, and at a certain point in that conversation Smith entered the room, and Mr. Richardson asked in Smith's presence if it would be satisfactory to do what he wanted to do through Smith. I am not certain whether it was in the judge's testimony or somebody else, at all events, they had this interview, and these parties came to an understanding, as we claim, with regard to it. Richardson pays all of the hotel bills, and the parties separate. Some delay occurred in raising the money. By Smith's directions Collins went to Rome on the 13th, and telegraphed to Haddock in Smith's name:

"Everything is right; business prevents my coming to-day. Will be on hand to-morrow. Send instructions to new marshal to muster same as before. Send answer by this line to Rome."

Haddock responds promptly to Judge Smith:

"I have given directions as requested by you."

And the same day telegraph's order to that effect to Major Beadle, who had succeeded Captain Crandall in the office at Utica. This same day, March 14, Richardson was arrested in Utica, and Smith telegraphs at once to Haddock, inquiring if it was done by

his order. And the response comes the next day that it was not. The arrest was made by Major Beadle. Suspicions were aroused and detectives were abroad.

On the 16th, the $5,000 is raised in U. S. 7.30 bonds. The currency could not be had, unfortunately, and Smith started with it for Elmira, to take to Haddock in connection with the old memorandum of favors that were wanted. He met Haddock at Elmira on the 18th. Called his attention to these government notes, which he had; showed them to him but he declined to receive them, and said he had finally made up his mind to have nothing more to do with Richardson. Smith, on his return, reported his failure, and delivered the bonds to Richardson. He told Collins he could do nothing with Haddock then. That Richardson had made a great mistake that he hadn't raised the money and straightened this thing out a long time before. That he would not have been arrested if he had. A word in regard to the compensation which the defendant expected for his services. Mr. Collins, on behalf of Richardson, had a conversation with Smith, as to what he, Smith, expected to receive.

They had some general conversation on the subject, and Smith told Collins he was not legally entitled to anything, but if Richardson would give him $2,000 he should consider him a pretty clever fellow, and would appreciate it. On the 24th of March, another interview was arranged by telegraph, between Smith and Haddock, which took place at Canandaigua. They occupied the same room, and their only business was the matter of Richardson. What was the object of the interview, and what the subject of their conversation, we do not know. We do know, however, that down to this time, and into the month of April, Crandall had steadily refused to deliver the $20,000 bonds to Haddock or his subordinates, or to Richardson; and that Richardson had threatened a suit, and that Crandall had reported the whole matter, fully and in detail, to General Fry and the War Department, for specific instructions.

As late as the 4th of April at least, we find this respondent still interesting himself in aiding Richardson to obtain possession of his bonds, and to get certain credits manipulated for Richardson's benefit, for procuring which, Richardson had promised to pay him $500. In this rapid sketch I have omitted many details of the operations between Haddock and Richardson, of which Judge Smith, as we shall insist, was cognizant, and have been content merely to indicate in this general way, the main facts, towards which our proof

will be directed upon the record as against Haddock, and upon the evidence then offered, and upon the evidence we expect to produce here, we are satisfied that any jury of 12 men would have reached the same conclusion. But however this may be, these leading and main facts will not be disputed:

1st. That in the months of January, February, March and April, 1865, upon the assurance of Richardson that he should be well paid, and that he should make a good thing out of it, he, Smith, devoted his time and services and influence, to aid and facilitate Richardson in the business of bounty brokerage, and especially in soliciting, and procuring by correspondence and personal interviews, orders and forms from Major Haddock, which was in violation of the established regulations.

2d. That he received from Richardson and personally carried to Major Haddock the sum of $5,000 in 7-30 government notes, knowing at the time that it was sent in pursuance of a corrupt agreement between Haddock and Richardson, and was intended as a compensation for past and a bribe for future improper and unlawful favors.

3d. That having knowledge at least from the 3d or 4th of March, that Richardson had in his possession certain letters, telegrams and papers, in the handwriting of Haddock, which furnished evidence or were claimed to furnish evidence of official guilt and misconduct on the part of Haddock; he, Judge Smith, agreed with Haddock, to procure them to be given up, destroyed or suppressed, in order that they might not be used as evidence against him.

4th. That to accomplish this design he gave Richardson, while he was in his pay, assurances and promises, which he either never meant to fulfil, or which if fulfilled would be in violation of the established regulations, viz: that if Crandall gave up the $20,000 in his hands as an officer of the Government to Haddock, Haddock would deliver them to Richardson.

These particulars form the substance of our 7th and 8th charges. And these we think we shall be able to establish beyond all question, from the testimony of Judge Smith.

The seventh and eighth charges are as follows:

" 7th. That the said George W. Smith did, while holding said office at Utica, in the said county, on or about the 16th day of March, 1865, receive from one Aaron Richardson, a person then engaged in the business of bounty broker, the sum of five thousand dollars, in seven-thirty government notes, upon the understanding

and for the purpose of offering the same to the said John A. Haddock, then Acting Assistant Provost Marshal General of the Western Division of New York, as a bribe for favors granted or to be granted to said Richardson; and did knowingly and corruptly bear and offer the said bribe to the said Haddock for the purpose aforesaid."

8th. That the said George W. Smith, being such county judge as aforesaid, did heretofore, to-wit, on the 10th day of March, 1865, and at other times, at Utica aforesaid, and also at Rochester, endeavor to procure from the said Aaron Richardson certain letters and telegrams, addressed and sent to him, and certain other paper writings delivered to him by the said John A. Haddock, which papers tended to prove that the said Haddock had been guilty of misconduct and maladministration in his office of Acting Assistant Provost Marshal General of the Western Division of New York, with a view to suppress the evidence contained in said papers, and to screen said Haddock from just censure and punishment; he, the said Smith, well knowing the character and general contents of said papers, and the purposes for which their return was sought.

The ninth charge is as follows:

9th. That the said George W. Smith, being county judge as aforesaid, habitually neglected the duties of said office, and was unseasonably absent from his office, without any sufficient reason or excuse, and that he was engaged, either for himself or others, in the business of furnishing recruits and substitutes, and bounty brokerage, a business inconsistent with the proper discharge of the duties of his place, and to the great loss and detriment of persons having business before him as county judge, or in the county court of said county; that such neglect has extended through the whole of his term as county judge.

The evidence which will be offered in connection with the preceding charges will go far to sustain all we have here alleged in regard to the neglect of his business and engaging in bounty brokerage on his own account or for others. Take the month of March alone, and we find him leaving home on the 2d to go to Elmira on this precise business, to see Haddock for the benefit of Richardson, or McIntosh and another broker. From thence to Rochester with Hoard to see Richardson, with him Saturday the 4th and Sunday the 5th, starting from Elmira again on the 6th solely on Richardson's business—Richardson furnishing money to

pay expenses, and making arrangements for another meeting. On the 10th he is again in Rochester with Richardson, when the $5,000 arrangement was made. To Canandaigua on the 14th or thereabouts to meet Haddock solely on Richardson's business. Again to Elmira on the 16th to see Richardson with the $5,000 in bonds, and with Collins' memorandum in his pocket. To Canandaigua again on the 24th, to meet Haddock. To Elmira again on the 29th to see Haddock on the same general business. This is the history of one month's operations as we learn it from his own testimony. In addition to this, and from the same source, we find him at Auburn looking through the recruits at Camp Seward, to see if McIntosh's men are all safe.

At Elmira to have credits for them allowed, and bonds released. We hear of him at Watertown and elsewhere seeking to make contracts for himself and on his own account, and telegraphing Richardson or Collins to know whether they could fill his orders. We find him operating for Martin F. Hamilton and Brown outside of his own county. He was negotiating at Utica and elsewhere to put in men for himself and on his own account. So much we learn from his own lips without calling another witness. Upon the trial of Major Haddock in Elmira in May and July and August, we find him acting as counsel for Major Haddock, and devoting to the trial and its preparation, we venture to say, not less than three or four months' time exclusively. Meantime, for all practical purposes, the county court is closed, and his official duties neglected and abandoned.

Whether these numerous and prolonged excursions from the county at any time interfered with the regular terms of the court of sessions or of the county court or not, is unimportant. In various cases, by reason of his repeated absences, his powers and duties were substantially abrogated and abandoned, to the manifest inconvenience of suitors and counsel. The complaint was general and well-grounded not only during the last year, but to a greater or less extent throughout his entire term. No order to show cause, or any order or writ requiring a return to be made to the judge could be asked for with any assurance that it would be available.

We have not cared to multiply instances of this kind ; we have noted one or two only in our charges as presented to the Governor, as illustrations.

I have thus indicated in a somewhat crude and imperfect manner, perhaps, the general character of the charges which we have

preferred. They are, as it seems to us, grave and serious in their nature, and worthy of an investigation. Substantially admitted or proved, as it seemed to us, by the published testimony of Judge Smith himself and others in another tribunal, attempted to be justified by a publication, understood to have been prepared by himself and circulated extensively among the people of our own and surrounding counties, there seemed to be no alternative but to sanction by a silent acquiesence the whole catalogue of offenses, or appeal to the Governor and Senate for relief. We shall present before you the evidence as it fell from the Judge's own lips, with all his own explanations and apologies. We shall answer his apologies and explain his explanations by the additional testimony of a few other witnesses, and shall then leave the question for your determination, asking and desiring no injustice to be done to this defendant, actuated by no personal or partisan feelings. A full and fair investigation is due to this defendant; it is due to his official station; it is due to the people of the county of Oneida. And if after the testimony shall have been duly considered, you find nothing in his private or official conduct worthy of rebuke, nothing unbecoming in one occupying his position, we would not ask for his removal. But if you shall discover on his part, an habitual disregard of these wise and prudent restrictions by which the law has sought to protect the judicial office from corrupt influences and improper practices; if they indicate on his part a greedy avarice which has led him to the extreme verge of the law and beyond in his official or private conduct; if they disclose a disposition and willingness to prostitute his official power, influence or patronage to base and selfish purposes, we may with confidence expect at your hands the relief we ask—his removal from the office which he is unworthy to fill.

Mr. SEDGWICK: According to the understanding with the counsel on the other side, and to save the necessity of calling for the original papers from the War Department, of the proceedings which transpired at the court martial for the trial of Major Haddock, a certified copy of the stenographer's minutes of the proceedings is produced, from which we propose to read the evidence given on that trial by the respondent. It is understood that that record may be used by the counsel for the defense to read from it whatever they may choose to sustain the defense set up, with the further understanding that in such case we shall have the right to

read such other portions as are competent to rebut the evidence which the defense shall produce in this case from that record.

MR. SHAFER: The counsel has not stated the matter fully. The prosecution are limited and confined in their reading to the evidence given by the respondent in this case on that trial, and are not allowed to read any of the other depositions, notwithstanding our waiver of the production of the stenograper who took the evidence on the court martial, we reserve to ourselves the right to raise objections to the sufficiency and competency of evidence offered, as in ordinary cases.

MR. SEDGWICK: We propose to read now the evidence given by George W. Smith, the respondent in this proceeding, given before a general court martial convened at Elmira on the 22d of May, 1865, by virtue of special orders from the War Department, bearing date May 18th, 1865, and which court martial, as appears by the order, was appointed to meet at Elmira, New York, on the 17th of May, 1865, or as soon thereafter as practicable, for the trial of Major John A. Haddock, 12th Regiment Veteran Reserve Corps, and of which court General Robinson, I think, was president, and Roscoe Conkling was judge advocate.

MR. SHAFER: To this proof offered we have the right to read from the record of that trial.

MR. SEDGWICK: And to rebut any thing you may read from the record, we have a right to read anything from the record which is proper evidence.

MR. SHAFER: That follows as a rule of law, I suppose.

MR. SEDGWICK then proceeded to read the following from the record referred to:

GEORGE W. SMITH, *a witness on the part of the defense, was duly sworn in the presence of the accused, and examined as follows:*

Questions by Colonel WOODWARD, counsel for the accused.

Q. Are you acquainted with Major Haddock? A. I am, and have been since 1848.

Q. Sometime after Major Haddock went to Elmira as Acting Assistant Provost Marshal General, did you have an interview with him there? A. I did; I saw him there the 8th or 9th of January last.

Q. In that interview did you mention to him one Aaron Richardson, a recruiting agent, or broker? A. I did.

Q. Please state what the substance of your interview with him upon that subject was?

Question objected to and waived.

Q. Did you go to Elmira at that time at the request or suggestion of Aaron Richardson, to see Major Haddock? A. Yes, sir.

Q. What was the business on which you were sent there by him? A. He wanted me to obtain authority for his clerk, Collins, to make enlistment papers outside of the office of the provost marshal. He also wanted permission for the provost marshal at Utica to muster men in upon paying them five-eighths, or a proportion of the local bounty. I do not know certainly whether he named the exact proportion.

Q. Was that all? A. I think that was all that was stated that he desired to obtain.

Q. What did you say or do at Elmira in furtherance of those instructions? A. I had further conversations with Richardson at that time. He opened the subject at large by saying he wanted to get some orders of Major Haddock, and that he understood I probably could obtain them. I told him I probably could get any ordinary order, any order that perhaps any person could get, but that he must not expect to get any order that was improper, and that Major Haddock would not give any order that was in violation of his duty as an officer.

Q. Did you say to Richardson at that time that you could get almost any privilege for mustering in men? A. No, sir, nothing like that.

Q. When you went to Elmira under Richardson's instructions, state what efforts you made with Major Haddock to accomplish what Richardson desired; state all that passed between you upon that subject?

The Judge Advocate objected to the question, first, on the ground of incompetence; second, because it is not a conversation to which any witness for the prosecution has testified, and therefore it contradicts no part of the evidence; and third, because, if the object is to show that Richardson was recommended to the accused, the simple fact that he was recommended is the only evidence competent, and not the detail of the conversation between them.

The court was cleared for deliberation, and after a short time so spent, the doors were opened, and the president of the court announced in open court, and in the presence of the accused, that the court had decided that the last part of the question asked should not be put; but that the witness may

state what he applied for to Major Haddock; what he obtained, and what he did with any papers, orders or communications received from Major Haddock.

A. I applied for authority for Mr. Collins to make enlistment papers outside of the office; I applied for an authority for men to be mustered in upon the payment of five-eighths to the enlisted men, as was the understanding in our town. It seems the letter was written by mistake "three-eighths." The talk between us was the other way. But, whatever it was, the letters were got as written, of course, and I brought them back with me to Utica.

Q. What reasons did you urge upon Major Haddock for granting Richardson the facilities you asked for?

Objected to on the ground above stated. The court was cleared for deliberation, and after a short time so spent, the doors were opened, and the President of the court announced in open court, and in the presence of the accused, that the court had decided that the question proposed may be answered.

A. I said to him that Richardson had been largely engaged in filling the previous quota in the county of Oneida; that supervisors there had obtained assistance from him to that end; and that he was relied upon there very largely as a man to aid them in filling the quota of that county, and that I thought any proper facilities that could be given him, in carrying on that business, would meet the approbation of the people there.

Q. What reasons did you urge in favor of granting Collins permission to make out papers outside the office? A. I told him Collins was a competent and careful man, and had good clerical qualifications; that he would make papers correctly, and would be a safe and proper person to intrust business of that kind to.

Q. State whether to your knowledge, Major Haddock had seen Mr. Collins in your office in Utica, previous to that? A. He had; Major Haddock had been in my office upon one or more occasions when Collins was present. I think they were not introduced, but Collins knew who Major Haddock was.

Q. Have you stated all that occurred between you and Richardson, previous to going to Elmira? A. I have not stated all that was said. I have stated the specific purpose for which I went at that time, and for which I was desired to go. There was talk about getting facilities at large, in respect to his business, about which there were no specific specifications made, and that if I would get him facilities he would compensate me for my trouble in doing

so, and it was in that connection that I stated to him that any proper or reasonable order could be obtained, but that he could not expect anything that was unlawful, and that Major Haddock would not grant any in violation of his official duty.

Q. Did you talk with Richardson about obtaining him facilities for putting in men without the bounty going forward with the men? A. No, sir. I think no such subject as that was even suggested between us.

Q. When did you next see Major Haddock, after this interview on the 9th of January. A. I did not see him again until the 3d day of March.

Q. Had your going to Elmira on the 3d day of March, anything to do with Richardson's business? A. No, sir; nothing.

Q. State the circumstances of your meeting at Rochester, on the 4th of March, with this man Hoard? A. After leaving Elmira, which I did on the night of the 3d of March, I went to Rochester, and stopped at the Osborn House. That night or the next morning I saw Richardson there.

Q. Was that meeting pre-arranged, or accidental? A. There was no pre-concert about it; I went to Elmira in ignorance of Richardson. I presume he did not know anything about my going there. I met him at Rochester, and he enquired of me at that place if I had seen Major Haddock.

Q. Did you not meet Mr. Hoard at Rochester at that time? A. I think he went from Elmira with me.

Q. Did you know anything about Mr. Hoard having an order from Major Haddock in his pocket upon Capt. Crandall? A. Yes, sir, to deliver to him the $20,000.

Q. Of securities and moneys in his hands? A. Substantially that.

Q. Did you understand from Major Haddock that Richardson had papers in his hands which he wanted to obtain possession of? A. Major Haddock had told me so.

Q. In that connection what did Major Haddock say about those papers?

Objected to, and objection sustained.

Q. State what occurred between you and Richardson at Rochester? A. He inquired there about Major Haddock, and I think he said he expected him there; I am not sure about that, however, he enquired of me if Major Haddock came along; I told him he did not, but that I saw him at the cars; we had some

further conversation, in which Richardson stated something to the effect that Major Haddock was hostile to him, and was doing something to interfere with his business; I think we talked about an order for holding securities, and in respect to a telegram that Major Haddock had sent down, charging that thieves and bounty jumpers were being enlisted in that county pretty largely, and he argued from those things that Major Haddock was in hostility to him.

Q. That was the substance of your conversation, was it? A. That was it substantially; in that connection I told him there was a difficulty between them, and that perhaps I could be able to settle it, and that I would endeavor to get the matter arranged; I said that to him because I was then intent upon getting these papers.

Q. Confine your evidence to what actually occurred between you and Richardson? A. That is about the substance of our conversation as I recollect it now; I did not talk very freely with him; I sought rather not to disclose what I knew, than to state what I did know.

Q. You went from Elmira to Rochester, did you not? A. I think not. After that interview on the fourth of March at Rochester, I came home to Utica. I left Utica again for Elmira on the sixth.

Q. By whose request? A. By the request of Aaron Richardson.

Q. Was there a meeting at Rochester arranged between you and Major Haddock at that time? A. It was arranged at that time that he would meet Richardson at some future time to be fixed.

Q. Were the time and place fixed? A. I am not certain that they were fixed at Elmira. I believe it was agreed that they might be fixed at a subsequent time by notifying Major Haddock.

July 14, 1865.

The witness being recalled, the examination was continued, questions by Col. Woodward, counsel for the accused:

Q. You have testified that on the interview you last mentioned with Maj. Haddock at Elmira, there was a meeting arranged for between you, Haddock and Richardson, at Rochester. What was the object of that meeting? A. On my return to Utica, and before my starting for Elmira, on the 2d of March, Richardson

desired that I should return there for the purpose of obtaining certain orders which he wished from Maj. Haddock, among them an order for the bonds, an order authorizing the provost-marshal's office at Utica to muster men for other points in the Western Division, and authority also to pay men either at the place of enlistment or at the draft rendezvous. I think those were among and perhaps the most important of the orders. Something, too, I believe was said about the Verona men. My mission to Elmira was to see Maj. Haddock and inform him what Richardson desired. He declined to do any thing about it, and would do nothing about it until he saw Richardson, and Richardson had given him those documents and papers. He finally agreed to meet Richardson at Rochester; said he would not meet him without my being present. He made it a condition that Richardson—

The JUDGE ADVOCATE here objected to this evidence on the ground that it was in contravention of the ruling of the court, as also of all rules of evidence applicable to such a case.

The objection was sustained.

Q. Was anything said at Elmira between you and Haddock about Richardson paying Haddock any money?

Objected to by the Judge Advocate and objection sustained.

Q. What motive did Major Haddock express at that time for desiring to meet Richardson?

Question objected to by the Judge Advocate, and objection sustained.

Q. State whether this interview actually took place at Rochester, between you and Haddock and Richardson? A. We went there on the 10th of March.

Q. What part did you take in that interview? A. I went in company with Richardson and met Major Haddock there. After some unimportant conversation, Richardson and Haddock went to a room together. I was not present.

Q. Who first mentioned the $5000 to you? A. After they had remained at their room a while talking, perhaps fifteen or twenty minutes, I came into the room, and then conversation upon their matters, whatever it was, had ceased. There was nothing said in my presence about any money, nothing said about sending anything through me, and nothing said about keeping any draft back.

Q. From whom did you first hear about this $5000? A. I

think the first I heard of it was from Richardson after our return to Utica.

Q. That was the first allusion to it you heard? A. I think so.

Q. Previous to your going to Elmira with the $5000, what did you say to Richardson? A. I asked him from time to time (I think he was under arrest then), if he was ready to have me go to Elmira on his business. He postponed it from time to time, said he was not ready, and I think upon every occasion certainly upon several of them, I asked him for the papers that Major Haddock had desired of him, and he gave various excuses for not having them. They were desired from him by me before we went to Rochester. I think he then stated to me that a part of them were in his trunk in Albany. On my return from Elmira on the fifth, Richardson went directly on to Albany. I asked him for the papers at that time, and I think he told me they were in his trunk at Albany. Either upon that occasion or some other, he informed me that a portion of them were down there. When I got ready to go to Elmira on or about the 16th of March with the $5000, it was on the day the flood commenced rising there, and impeded the trains upon the Central road, I inquired for the papers, and he stated then that they were in the hands of Collins, and that he had either put them into a safe, or had taken them out of town with him, he having gone to Whitestown. I told him that was all wrong, and that the papers were of the most consequence, and I intimated to him that he would probably succeed in nothing for that reason. At any rate I complained of the fact.

Q. I understand you that nothing was said at Rochester by Haddock, Richardson or you about the $5,000? A. I do not recollect of anything.

Q. When you went with the $5,000, was Major Haddock acquainted with the fact that you had the $5,000? A. I told him of the fact, that I had Richardson's money; I do not know that I stated the amount.

Q. Did you at that time deliver to Major Haddock any money, or offer to deliver it to him? A. I did not offer it; I brought it to his attention. He shook his head and gave me to understand that he would have nothing to do about it. He said he should have nothing more to do with Richardson.

Q. State what was your object in taking this money of Richardson's to Elmira?

Objected to on the ground that the witness should state the

facts that took place, and not his personal object; by the judge advocate, and objection sustained.

Q. When were you next at Elmira? A. I think not again until the 29th of March.

Q. What was your business at that time? A. Nothing in connection with Richardson's business affairs. I was out there to obtain a release of certain moneys which had been put up by certain clients of McIntosh, and to make a demand of the money from Haddock to lay the foundaiton of a proposed suit upon their part for the money.

Q. There has been some testimony upon the part of the prosecution respecting something you said to Richardson about his making $5,000. What did you say? A. While negotiating with him in reference to those papers, I made some remark to the effect that if he had given them up, and had been able to continue on in his business, he likely might have made $5,000 more than he did make. In that conversation, or another upon the same subject, he said there was a better opportunity to make money at that time, than there had been: that by furnishing substitutes for drafted men, larger profits and gains could be made than had been in any stage or branch of his business.

Q. Had you any knowledge of Collins' business at Elmira until after his visits there were made? A. Nothing. I was ignorant of them entirely.

Q. Had you any knowledge from him or anybody else, of the objects of his visits there? A. I had not.

Q. Did you ever hear of any lists of surplus credits being given by Major Haddock to Richardson, as a basis for contracts? A. I did not. The first I ever heard of this paper was upon this trial. I had heard from Haddock that there was some paper. After this negotiation commenced, subsequent to the 3d or 4th of March, I heard that there was some paper in relation to surplus credits. I never knew the particular nature of it until this trial, when it was produced in evidence.

Q. Did Richardson ever inform you of any agreement existing between him and Major Haddock by which he was to divide the profits from filling quotas, the towns being ignorant of the credits? A. Never a word.

Q. What knowledge had you of Richardson's negotiation with Haddock up to March 3d? A. As I now recollect, I had no knowledge of them whatever.

Q. How many orders did you apply to Haddock to obtain for Richardson? A. I think in all some twelve.

Q. How many of those orders did you actually succeed in obtaining? A. Those I obtained were the authorization for Collins to make enlistment papers out of the office; the five-eighths local bounty order, and the third and last order obtained upon my request, was the order for enlisting men at other points in the Western Division. Those are the only ones I ever had any agency in obtaining that I recollect. The other orders I sought were refused by Major Haddock, along with some others, I sought for other parties. I never got him to make any order for anybody, except those three that I now recollect, except that in regard to Norton. I got an order for his being mustered in.

Q. State what was the object of your meetings and negotiations with Richardson and Haddock, or either of them, after March 3d?

Objected to on the ground that the witness should state the facts that took place, and not his personal objects, and objection sustained.

Q. State the facts then as to those negotiations and interviews subsequent to March 3d? A. The fact was, that I was employed by Haddock to negotiate for and obtain those papers. I did not know their precise character, but there were papers in his hands said to be letters, telegrams, &c.; and I did negotiate with Richardson for that purpose, and that was the main purpose that entered into every interview so far as I recollect.

Q. What did Richardson say to you about the other side having made heavy bids to induce him to operate against Major Haddock to make out a case against him? A. He told me upon two occasions, and one, in the latter part of these negotiations, in my office, that the other side, and he had spoken of the other side as men who were endeavoring to get Major Haddock displaced, or to get up some opposition against him with a view to his displacement, that the other side had bid high to him, or offered him strong inducements to have him enter in with them to make a case against Major Haddock. And he used other expressions to me, indicating that strong inducements were held out to him for that purpose.

Q. And whom did you understand from him the other side to be?

Objected to, on the ground that the conversation is the proper

evidence, and not the understanding derived from it, and objection sustained.

Q. What did he say? A. He mentioned in that connection the name of Mr. Conklin; he named him to me as one engaged in hostile proceedings against Haddock.

Q. How did Richardson agree to pay you for your service in his behalf? A. He agreed to make me a compensation personally.

Q. In the character of attorney? A. I so understood it.

Q. Did he ever promise to pay you out of the general run of his business? A. Never; he said, in regard to compensation, that he would pay me liberally, pay me well, and make it an object for me to do what he wanted done.

Q. There never was any understanding that you were to have any share or specific portion of the profits of the business? A. Never.

Q. What did Richardson say to you about the time the telegram about thieves and bounty brokers was received, as to what Major Haddock had done for him? A. He complained of that order as evincing a spirit on the part of Major Haddock to interfere with his business; he said also, that Major Haddock had never done anything really to aid him, and that what he himself had done about putting in men and carrying on his business, had been done on his own responsibility.

Q. Was anything said about that order embarrassing his operations and business? A. That was the idea; that it was an embarrassment.

Q. Did Richardson say to you at the Osborn house, in Rochester, that the trouble between Major Haddock and himself was that he had not sent Major Haddock any money lately? A. I do not recollect any such statement, and I do not think he made it.

Q. Did you ever say to Richardson that Major Haddock had protected him? A. I did not; I read to him a portion of a letter I received from Major Haddock, which stated that detectives had been in Utica trying to discover something against him, and that he understood they had not found anything specific, and which contained an intimation in that connection that he did not seem to stand in any danger; but nothing to the effect that Major Haddock had protected him, or anything of the sort; that was not in the letter, nor did I say it.

Q. What did Richardson say about his handling Crandall? A.

He said to me at Bagg's Hotel that he could handle Crandall better than he could Richardson.

Q. Who was this Richardson? A. Joseph P. Richardson, the previous provost marshal.

Q. Had Richardson, the marshal, been dismissed the service? A. Yes, sir; he said in the same conversation that he could get along better with Crandall than with Richardson.

Q. Were you ever in the provost marshal's office in Utica, aiding Richardson in recruiting? A. Not at all, as I recollect; I was there on one occasion in reference to two or three Redfield recruits after he was arrested; that was the only time I went into that office in connection with his business.

Q. Was there ever any understanding between Haddock and yourself about making or dividing or sharing the profits which might be made out of filling quotas and recruiting men? A. There never was.

Q. Was there ever any understanding between you and Major Haddock about giving any privilege or special advantage to any bounty broker, except the three orders you have stated you obtained at Richardson's request? A. There never was in respect to bounty brokers, and I never obtained any order of any sort except those three, and the order in the case of Norton already mentioned.

Q. Did you ever have any connection with Richardson in the business of filling any quota? A. Never.

Q. Did you ever have any connection with Richardson in procuring any credit to be made by Haddock upon any quota whatever? A. I never did. Except that I spoke to Maj. Beadle to see whether certain credits revoked in the town of Redfield might not be restored, and I think I may have mentioned that subject to Major Haddock. Nothing, however, was ever done about it at my suggestion or solicitation.

Q. Did you ever make any arrangement or agreement with Maj. Haddock to become pecuniarily interested in the business of recruiting in the western division of New York, or elsewhere? A. I never did in any form.

Q. Did you ever become so interested with Maj. Haddock in that business? A. I never did.

Q. Did you once tell Collins that the difficulty between Haddock and Richardson was because Richardson had not raised the $5,000. A. I do not think I ever did; I suggested to Collins that the reason for that difficulty was that Richardson had not pro-

duced those papers that Haddock was seeking; I do not think I mentioned money in that connection.

Q. Did you ever say to Collins that Richardson made a great mistake that he did not raise this money, and straighten the matter up before he was arrested? A. I think not; my conversation with him related to the papers as the main thing.

Q. Did you ever say to Collins that you were not legally entitled to compensation from Richardson? A. I think not; my recollection of what I told him upon that subject, was that I should not prefer any claim against Richardson, but leave him to pay something or nothing as he saw fit; I do not think I said to him that I had not any legal claim.

Q. Was there any agreement or understanding ever made between you and Richardson that you were to have a share or any portion of the profits of his business? A. I had no such interest in it in any shape or form. What I did he was to pay me for upon the ground of services performed, and trouble and care incurred.

Q. Have you ever received from Major Haddock, or ever been led to expect from him any valuable consideration for anything you ever have done in the way of assisting in getting recruits or filling quotas? A. Never.

Cross-Examination—Questions by the Judge Advocate:

Q. Have you been in this city while this trial has been progressing this time? A. Yes, sir.

Q. Where? A. At the Globe Hotel.

Q. Is that where the other counsel for Major Haddock and Major Haddock have been staying? A. The same place.

Q. Have you been examined by Colonel Woodward from questions or written memoranda prepared by yourself? A. Yes, sir.

Q. Where did you first see Maj. Haddock after you learned that he was to be Acting Assistant Provost Marshal General at Elmira? A. He was at Utica some weeks—certainly some days before he assumed the duties of that office. I think several weeks before. I saw him both at my office and took dinner with him at Cassidy's.

Q. Your expression is "both at your office, and I (you) took dinner with him?" A. I saw him first at my office, and afterwards the same day at Cassidy's.

Q. Was that the first time you knew he was to be appointed

Assistant Provost Marshal General? A. I did not know that he was appointed then; he gave me to understand it was probable.

Q. At what place in Utica besides those places did you see him on that occasion? A. I saw him at Col. James McQuade's office; no, it was on a subsequent occasion that he was at Col. McQuade's office. I am not entirely positive whether it was on the same day or not.

Q. How many times was Major Haddock at Utica after you expected that he was to be appointed, and before he assumed his position at Elmira? A. I am not certain whether it was once or twice. My impression is it was twice.

Q. At what time of the day on the first occasion did he come there? A. I think I saw him about noon.

Q. Did you know he was coming? A. I did not.

Q. Where did you see him first? A. I think at my office; or else he called at my office and I was at Bragg's Hotel, and I may have seen him there first.

Q. Do you know where you went together upon the first occasion? A. I think we went and took dinner at Cassidy's restaurant the first thing.

Q. Was that under McQuade's office? A. Yes, sir.

Q. Did anybody take dinner with you? A. I think not.

Q. And after dinner where did you go? A. To Col. McQuade's office, if that was on the first occasion.

Q. How long did you remain in McQuade's office? A. Several hours.

Q. Who were there? A. Col. McQuade, for one, and several came in; his brother, and Thomas Van Emberg, John Burt, and Gen. Sylvester Dearing.

Q. Those were persons who came and went, were they not? A. Gen. Dearing was there pretty much all the time. That was his office also.

Q. Were there two rooms or one? A. One room divided into two apartments by railing.

Q. Which one did you occupy? A. The inner one.

Q. And at what time that day were you there? A. Until pretty late at night.

Q. How late? A. Until 10 or 11 o'clock, perhaps later.

Q. Where did Maj. Haddock go from there, and where did you go? A. Haddock left for some point, I think Elmira or Buffalo.

Q. You did not go anywhere after you left McQuade's office, before Haddock went away? A. I think not.

Q. Are you positive of that? A. I have no recollection of it; I do not say I did not.

Q. And you, and he, and McQuade separated just before he went off? A. I think so; I think others remained there later; I think McQuade's brother and several others remained to a late hour.

Q. When did you next see Major Haddock? A. I do not think I saw him again until I went to Elmira on the 9th of January.

Q. Can you give the date of the day he was at Utica? A. I can not.

Q. Do you know a man in Albany by the name of Jack Lawless? A. Not by his name.

Q. Did you propose to other persons than Aaron Richardson to get facilities for them from Major Haddock? A. Not to my recollection.

Q. Do not you know whether you did or not? A. I am very positive I did not.

Q. Did you never propose to anybody except A. Richardson to obtain facilities from Major Haddock in regard to recruiting? A. I think not; I am entirely clear upon that point.

Q. When did you first write to Major Haddock after he left Utica on that occasion? A. I can not say; I used to write him occasionally.

Q. How soon after this particular occasion did you write to him? A. I have no recollection of writing until pretty late in February.

Q. Not until you had been up to see him in January? A. I think I did not write him in the mean time; I remember now, I did write him in reference to this Norton case twice; that must have been the first occasion upon which I wrote.

Q. When was that? A. It must have been in the late days of December.

Q. Norton was a man in jail, was he? A. He had been in jail.

Q. He was in jail when you wrote, was he not? A. I think he was.

Q. For burglary and larceny? I understood he was in for larceny.

Q. Was Henry T. Utley your partner then? A. He was.

Q. Did you write to Maj. Haddock the last days of December,

as you have said, requesting him to allow that man to be mustered into the service, or direct that he be mustered into the service, the whole local bounty to go to Utley? A. Substantially that.

Q. Did Maj. Haddock direct as you requested him? A. He refused at first.

Q. I did not ask you that? A. Finally I understood he did.

Q. Do not you know whether he did? A. The letter that was written by him upon that subject I did not see. It was opened by another party.

Q. Who opened it? A. I understood Utley did.

Q. And then this man was mustered in without receiving any of his bounty? A. I do not know how much bounty he received.

Q. Your application was to muster him in without bounty. A. Yes, sir.

Q. Which was in violation of the orders, was it not? Yes, sir; it would be in contravention of the order as it then stood.

Q. Did you then as county judge make an order to bring that man before you to bail him, so that he could be mustered in. A. I did not.

Q. You did not give any order upon the subject? A. I think not.

Q. Are you confident of that? A. I am perfectly clear that I did not.

Q. Look at the paper I hand you. Is it in your hand writing, the whole of it? A. Yes, sir.

Q. Do you say that you did not give that order? A. I see that I did give it.

The Judge Advocate thereupon offered and read in evidence the said paper as follows:

"*To the sheriff of the county of Oneida:*

"Let Charles E. Norton be produced at my chambers for the purpose of an application on his part to be let to bail.

"Dated UTICA, *January* 5, 1865.

"GEO. W. SMITH,
"*County Judge.*"

Q. Was not that Charles E. Norton brought from jail before you on that order, and on that date by you bailed? A. I cannot state positively whether it was on that date; I think I admitted him to bail on that day.

Q. Did you ever file the bail bond? A. I did not.

Q. Did you ever deliver it to the district attorney? A. I did not.

Q. Have you repeatedly, when application was made afterwards for that bail bond, denied any knowledge of it? A. I have never denied knowledge of it.

Q. Has not application been made to you to find the bail bond of Norton? A. I think not.

Q. Who was his bail? A. Henry T. Utley, my partner.

Q. And in this letter which you wrote to Major Haddock, you explained, did you, that Utley, your partner, was to receive this man's entire bounty? A. I think so; that he was to become bail, and that his bounty was to go to him in consideration of his being his bail.

Q. And it was under permission which came in reply to that letter that this man was mustered in? A. Yes, sir.

Q. Who was provost marshal then? A. Col. Poole.

Q. Had he refused to allow him to be mustered? A. I was so informed.

Q. What did you say Richardson, on the 8th or 9th of January, asked you to obtain from Maj. Haddock? A. It was previous to that; it was previous to my going to Elmira, which was about the eighth. I cannot say how long previously; probably a few days.

Q. Before or after this Norton transaction? A. I should think subsequent to that, but I cannot say.

Q. What did you say he wanted you to obtain. State his language? A. I cannot give his language. He stated he wanted this authority for Collins to make these papers; authority for men to go into service for such portion of their local bounty as they would agree to take. That was the substance of the specific matter he wanted at that time.

Q. Did you apply to Maj. Haddock for an order stating the specific proportion which was to go to them? A. I do not think I did.

Q. Did you not testify yesterday that Richardson wanted you to get an order that they might be mustered for five-eighths, and that you applied to Maj. Haddock for an order mustering them for five-eighths, and that by mistake, the letter was written for three-eighths? A. What I meant to state about that was this, that in consultation with Haddock, the thing decided upon by him, as I understood it, was that he should make an order by which the

men could get five-eighths, and three-eighths be retained by other parties, to whom they chose to assign it.

Q. Do you mean to say that now? A. That is as I recollect it.

Q. You understood that five-eighths were to go forward, and three-eighths to somebody else, if they chose to assign it. A. That was the talk, but the letter was written the other way, but that was by mistake, I think.

Q. What day of the month was that? A. It was the 9th or 10th day of January.

Q. Have you not forgotten that there is already in evidence in this case a telegraphic circular, published days before that, allowing all men to be mustered for five-eighths, and to do as they chose with the remaining three-eighths? A. I do not know whether that is so or not.

Q. Do you still say in the face of this circular of January 7th, 1865, that on the 9th or 10th of January, you and Major Haddock agreed that he should give Richardson permission to do precisely what this circular published all over the Western Division, had previously given permission to do? A. The whole thing taken together convinces me that I am mistaken about that, but that was the impression I had.

Q. So that you retract the statement that you applied to Haddock for an order to muster for five-eighths, and that the letter was written for three eighths? A. I did not say that I applied for a five eighths order. The permission was to allow the men to go for what they would agree to go for.

Q. You retract the statement, do you not, that Major Haddock agreed to give an order allowing men to be mustered for five-eighths, and that he wrote a letter for three eighths? A. I am mistaken, I think, I am not entirely certain that that was not the design; but it seems I was probably mistaken.

Q. When you returned from Elmira with those two letters, to whom did you deliver them? A. To Colonel McQuade.

Q. What time of day or night? A. I forget; I think it was in the morning of the same day after I returned.

Q. Did you ever show them to Richardson before you delivered them to Colonel McQuade? A. I think not.

Q. Now be good enough to state just as exactly as you can the conversation between you and Richardson, as you say it was, when he applied to you to get facilities for him? In the first place,

where was the conversation? A. We conversed about it at various places.

Q. How many different places? A. I think we must have conversed about it two or three times. I think he spoke to me about it at Bagg's Hotel, and at my office, and I do not know but at other places. I am not positive as to place.

Q. When did you first talk with Richardson about it? A. I cannot tell any nearer than that it was a few days before I went.

Q. Did you speak to him first about Major Haddock, or did he speak to you? A. He spoke to me.

Q. How came he to know that you and Major Haddock had relations? A. I think he obtained the information through Collins.

Q. What did he say to you and what did you say to him, the first conversation you had in regard to it? A. I have no very clear recollection about it, except as to matter of substance.

Q. Where was it, in Bagg's Hotel? A. I do not know.

Q. Did Richardson live at that hotel? A. He had rooms there. I think I first met him there, and I think he inquired of me if I was acquainted with Major Haddock, and what the grounds of acquaintance were, and he mentioned in that connection, I think, that Collins had told him we were acquainted, and that probably I could obtain orders for him. I am only giving the substance.

Q. Do you know how Collins got that idea that you could obtain orders? A. I do not, except I told him I had been long acquainted with Maj. Haddock, and that we were old friends.

Q. And upon that he suggested that he wanted to get certain orders? A. He said he wanted to get some facilities for recruiting, or something equivalent to that.

Q. What else? A. He said if I would obtain them for him he would compensate me, and make it for my interest.

Q. What else? A. I do not recollect that he said anything further upon the general topic.

Q. How long was that conversation? A. I do not recollect the length of it.

Q. And you cannot state anything else that was said? A. He said further that he wanted an order for Collins, and authority to allow men to contract for what they might choose to go for.

Q. And now can you tell what you said? A. I told him in substance I thought I could get him any proper order, any ordinary order. I told him also I would do so, and could get any

order that did not violate the rules and regulations, probably, but that he must not expect any that would violate them, and that Maj. Haddock would not make any that would violate the regulations.

Q. Do not you know it was a violation for men not employed in the provost marshal's office, to make papers outside of the office? And if it was not, what was the object of any such order? A. I do not know that it would be a violation for an officer who made the regulation to suspend it.

Q. Then you did not mean that you could not get any order violating the regulations, which had been made at that office, but that you could get from Major Haddock orders which would violate his own orders? A. That I could get none that would violate the orders of his superior authority.

Q. And do you say you told Richardson on that occasion that he must not expect Major Haddock to do anything that was wrong? A. I think I did.

Q. How came you to tell him that? A. Because I knew Richardson was a man who would desire to get things clear to the verge of the law, and beyond.

Q. How long had you known that of Richardson? A. I knew that he was a bounty broker, and had been engaged there in that business.

Q. How long had you known him to be such a man as you have described? A. I did not know it. I suspected it.

Q. How long had you suspected it? I knew it to my own satisfaction.

Q. How long had you known it to your satisfaction? A. I supposed him to be that from the fact of his being a bounty broker.

Q. How long had you thus supposed or suspected? A. From the first time I heard of him the preceding fall.

Q. Did you on that occasion say to Richardson, using this very expression, that Major Haddock "was on the make?" A. No, sir. That was a slang phrase and I am not accustomed to use slang phrases.

Q. Was there previous to that time a proposition that Richardson was to fill the quota of that county, for a large sum of money? A. I had heard so.

Q. From whom? A. I had heard it from Collins and from him.

Q. Did you and Richardson talk about it several times? A. I think we did.

Q. Do you recollect what you and Richardson had said about that? A. Not particularly. He stated to me that he was negotiating, or trying to negotiate, for filling the quota.

Q. Do you recollect what was said upon the subject of your having an interest in that contract? A. I do not recollect that anything was said upon the subject of my having an interest in it.

Q. Do you say there was not anything said upon the subject of your having an interest in that contract for filling the quota of Oneida county? A. I think not.

Q. Is that as strong as you are prepared to say? A. I do not recollect any such thing.

Q. Do not you know that you were to have an interest of $50,000 in that contract? A. No sir, I never heard it suggested.

Q. Did you ever hear that anybody besides Richardson was to have an interest in it? A. I do not know. I may have heard something of that sort.

Q. Did you go and talk with the supervisors about that contract? A. I may have had some conversation with them about it.

Q. You know you did, do you not? A. I did.

Q. With how many of them? A. I do not recollect of talking with any except James G. Preston.

Q. Do you say you did not talk with any others? A. I do not recollect of talking with any others. I did not ask him to make any such contract.

Q. That contract, if I mistake not, was broken up by Mr. Monroe, a commissioner of the board, by disclosing that the quota would not be as large as had been talked of, was it not? A. Perhaps it was.

Q. Do you recollect what the assumed quota of the basis of that transaction was? A. It was talked of as being likely to be about a thousand.

Q. About twelve hundred, was it not? A. One thousand was my recollection.

Q. Do you know what the number of men paid for by the county was? A. I do not.

Q. Do you know what the actual quota, in truth, less than 25 per cent not called for, was? A. I do not.

Q. Do not you know it was 783? A. I do not. The quota was 1044, as assigned.

Q. Do you mean that it was after deducting the 25 per cent not called for? A. No, sir; that was the quota assigned.

Q. And the 25 per cent was to be deducted from that? A. Yes, sir.

Q. Dou know the fact that under the operations which have been detailed here, the county furnished and paid for 1200 men to fill a quota of 783? A. I do not.

Q. Have you forgotten these figures and transactions I have been inquiring about? A. I have never known them. I had knowledge of the quota being assigned at 1044; but as to the deduction made, and how it stood after, I never knew.

Q. You say you first wrote Major Haddock about this Norton matter. Do you know when you wrote him again? A. I do not recollect writing him again until the latter part of February.

Q. Do you know where his letters with reference to Norton are? A. I do not.

Q, How many letters in all did you receive from Major Haddock after this Norton matter, down to the time of his arrest on the fifth of April? A. I suppose, from seeing a copy of the letter about the Norton matter in print, it must be in the hands of Mr. Monroe.

Q. Now answer the other question? A. Not more than two or three letters, up to third or fourth of March. After that had several from him.

Q. I am inquiring up to the fifth or sixth of April ? A. I cannot say.

Q. How many, probably ? A. Probably in all seven or eight. I do not undertake to be precise.

Q. Where are those letters ? A. Some of them are in my office, and some have been destroyed.

Q. How many are destroyed ? A. I cannot say.

Q. Did you destroy them ? A. Some of them.

Q. How many did you destroy ? A. As near as I can tell, probably three or four ; I think four or five.

Q. When did you do that ? A. Sometime ago.

Q. How long ago, and on what occasion ? A. I destroyed them from time to time. It must have been since the 3d or 4th of March, because most of them were received after that time.

Q. How did you destroy them ? A. Burned them up.

Q. And where are those you did not destroy ? A. I do not

know but I have some of them in my room among my papers. I think I have some of them either in my room or office.

Q. When you got to Elmira on the 9th of January, if that was the day, did you learn from Major Haddock that Richardson had been there the day before? A. I did.

Q. Did you know until you learned it from Major Haddock that Richardson had been there, or was to be there? A. I did not; I had had no intimation of it.

Q. Did you learn at what time he came and what time he went away? A. No; I do not think I learned when he came, and if I did, I have no precise recollection. My recollection is, I understood he left the day before I arrived.

Q. On the third of March, when you reached Elmira, if that was the day, did you learn from Major Haddock of any appointment he had made with Richardson to meet him? A. I am not certain. It seems to me he did say something about Richardson wanting to meet him, or that he had agreed to meet Richardson at Rochester.

Q. Meet him at Rochester, when? A. That night.

Q. Was Hoard there then in your presence? A. I do not recollect.

Q. Was Hoard in Elmira at that time? A. Yes sir.

Q. Did he go there with you? A. I do not recollect.

Q. Where did you go to Elmira from? A. From Utica.

Q. Did you stop at Syracuse? A. I think not.

Q. And you cannot remember whether S. Floyd Hoard was there or not? A. Since you speak of it, it seems to me he was on the train on the way down; I did not pay much attention to him at the time.

Q. And Maj. Haddock and you and Hoard went to the cars together at Elmira? A. Maj. Haddock went with me.

Q. Did Hoard? A. I think he did.

Q. And you and Hoard went to Rochester? A. Yes, sir.

Q. And you knew that Richardson had an appointment that night at Rochester with Maj. Haddock? A. Yes, sir.

Q. Now when you went to Elmira on that occasion, you came to Syracuse, thence to Binghamton, and from there to Elmira? A. I think so.

Q. What sent you and Hoard on your return around by the way of Rochester on that occasion? A. I do not know that we had any particular reason except convenience.

Q. It was the longest route you could take to get home, was it not? A. It was not the nearest.

Q. Was it not the furthest? A. No, sir, I could have gone further.

Q. How could you have gone further and taken any route to get home? A. I could have gone to Buffalo I suppose; it was not the nearest route nor the direct route.

Q. Did you state yesterday, in testifying as to the meeting between you and Richardson, that your encountering him there was unexpected and accidental? A. By accident, and without preconcert with him.

Q. And that you said although you had been told by Major Haddock that he was to be there, and you and Hoard went up there to meet him? You went to the Osborn House, did you? A. Yes, sir.

Q. How far from the depot is that? A. Three-quarters of a mile from the depot.

Q. More remote than any good hotel in Rochester, is it not? A. I do not know as to that.

Q. Did you understand from Major Haddock that the meeting between him and Richardson was to be at that hotel? A. I do not know that I did.

Q. Do you say you did not? A. I do not.

Q. Who paid your bills there at that time? A. Richardson.

Q. Now, when and where was that order made upon Crandall to surrender the bonds in his hands? A. I do not know; I understood Hoard had it with him when he started from Elmira.

Q. Who from? A. Major Haddock.

Q. How long were you in Elmira on that occasion? A. I do not think I was there more than that day.

Q. Were you not there over night? A. Possibly; I arrived on the second.

Q. Where did you stay over night? A. At the Brainard House.

Q. Who stayed there with you, if anybody? A. I do not recollect who stayed with me upon that occasion. I was there several times, and I cannot distinguish who was with me on the several occasions.

Q. When were you there several times? A. I was there on the 9th or 10th of January, on the 3d of March, and again on the 6th, and on the 18th and on the 29th of March.

Q. That makes five times you were there. Did you see the

order made for the delivery of those bonds? A. I do not recollect whether I did or not.

Q. Did you know what the bonds were deposited with Crandall for? A. I did not.

Q. You never had learned that from Richardson or from Haddock? A. I think I had heard Richardson or Collins say they were put up for the purpose of securing credits.

Q. You mean as a guaranty against desertions? A. I know Richardson claims now, and I think claimed then, that the bonds were put up for the purpose of securing the giving of the credits.

Q. And you mentioned that when this order was made and given to Hoard that they should be delivered? A. That was my general understanding of the object for which they were put up.

Q. Now I observe you answered the question put regarding what happened at Rochester on the 3d or 4th of March, that you do not recollect; that you have no recollection. Do you remember or do you not, what happened at Rochester upon that occasion? A. I recollect it generally.

Q. Do you recollect it all? A. I cannot say.

Q. Is there any particular reason why you do not recollect? A. I do not know of any.

Q. Were you intoxicated upon that occasion? A. I do not think I was.

Q. Did you tell Collins you were? A. I did not.

Q. Do you say you were not at all? A. I cannot say I was not at all. We indulged in liquor some.

Q. Do you mean now to say you were not at all intoxicated upon that occasion? A. I do not think I had drank liquor enough so that I did not have my complete recollection and powers of mind in every respect.

Q. Now tell me where you went with Richardson when you first reached the Osborn House upon that occasion? A. I think on the night beforehand I did not have much to say to Richardson.

Q. I ask simply where you were with him upon that occasion? A. We went to the office of the hotel, in the first place.

Q. Where did you first see him? A. I think I saw him down at the depot.

Q. He was awaiting at the depot when you got there? A. I think he was.

Q. Did you go from the depot to the Osborn House with him?

A. I think so; I went in the omnibus, and I think he went in the same.

Q. When you reached the Osborn House, where did you go, and where did he go? A. I went to the office of the hotel; I was about there and in the reading room.

Q. Is that all you can recollect about it? A. That is all I recollect.

Q. Can you recollect any conversation whatever, you had that evening with him? A. I did not talk with him much that evening.

Q. Can you repeat any conversation whatever you had with him that evening, and if so, repeat it? A. I do not know that I can undertake to repeat any conversation I had with him.

Q. With whom did you room that night? A. With Mr. Hoard.

Q. And in the morning how soon did you see Richardson? A. Pretty early in the morning after breakfast.

Q. Where? A. First in the reading room.

Q. Anybody else there? A. There were persons about, but they were strangers to me; Hoard was in and out.

Q. Can you repeat what conversation took place between you and Richardson there? A. Not accurately.

Q. Can you repeat anything that was said between you and Richardson there? A. Yes, sir.

Q. Repeat whatever you can? A. He spoke about Maj. Haddock being irritated with him, as he thought, and from the fact of his not coming up; he inquired of me why Haddock had not come.

Q. Did you tell him? A. I do not think I did tell him accurately; I probably evaded the question; probably I did not know.

Q. Was that true? A. Yes, I think it was. I did not really know. We stated he would not see him there.

Q. I ask simply whether it was true that you did not know why he did not come? A. Yes, sir.

Q. Why did you evade it then if you did not know? A. Because I knew Haddock had instituted a course hostile to Richardson, and I did not wish Richardson to know it.

Q. That was the reason you evaded it. A. Yes, sir.

Q. And yet you did not know why Haddock had not come there? A. Yes, sir.

Q. Do you recollect anything else you told Richardson on that occasion? A. I knew some reasons why Haddock did not come, and other reasons I did not know.

Q. Now answer the question? A. I recollect other conversation.

Q. Repeat it? A. He said he supposed one reason why Haddock was irritated against him was in regard to the three furloughed men; that he got three men furloughed, and they had deserted and had not returned, and that Haddock was irritated about that.

Q. Did he say Haddock had put up, or claimed to have put up, any money for them? A. I do not recollect what he stated as to his putting up money.

Q. Do you remember anything else which took place between you and him on that occasion? A. Yes, sir.

Q. State it? A. I told him also, whatever the difficulty was between them, I thought I perhaps might get it arranged.

Q. Anything else? A. I do not recollect anything else particularly.

Q. That is the whole of the conversation? A. So far as I recollect.

Q. What time of day did you take the train to come home? A. I stayed there all day and took the night train.

Q. What was your business there? A. No business, except I was on my way home.

Q. And you stayed there all day without business? A. This was Sunday and I took the first train.

Q. Did you stay at the Osborn House all day? A. We stayed about.

Q. Where did you go on that day? A. I do not now recollect.

Q. Did Richardson go with you? A. I do not recollect going anywhere with Richardson.

Q. Do you recollect whether he went with you or not? A. I do not.

Q. And that night you started for home? A. Yes, sir.

Q. Did Richardson start with you? A. He came to the depot with us.

Q. Did he take the cars with you? A. I took the train around by Auburn, and he went the other way.

Q. What took you around by Auburn? A. My business out there on that occasion was to see if I could get an order to get up the money which certain clients of McIntosh had deposited as security against the desertion of the men.

Q. I simply ask you what took you around by the way of Auburn? A. It was that business.

Q. You went around by Auburn to go to the military camp,

Camp Seward? A. Yes, sir; to see how many of those men remained at Camp Seward.

Q. How long did you stay there? A. I staid over night, and went the next day to camp.

Q. Did Hoard go with you there? A. No, sir.

Q. Where did he go? A. To Utica.

Q. From Auburn where did you go? A. To Utica.

Q. Did you tell Richardson if these bonds were delivered by Crandall to Hoard, Haddock would deliver them to him? A. About that time or subsequently, and during the pendency of the order for them, I think I did hold out the idea.

Q. I did not ask you about holding out an idea. I asked you if you told Richardson if the $20,000 were delivered from Crandall to Hoard, Haddock would give them up to Richardson? A. I did.

Q. Did you tell him that before or after you reached Utica on this occasion we have been talking about? A. I do not think I told him he would give them up. I said nothing about the subject of the bonds to him until afterwards.

Q. Then you did not tell him at Rochester, in substance, that if those bonds were delivered up to Hoard, Haddock would give them to him, Richardson? A. No, sir, I never told him anything of that sort.

Q. How soon afterwards do you say you told him that? A. I am not certain that I told him that, in terms, at all, but I think I did.

Q. How soon after was it? A. Of course it must have been after my return to Utica.

Q. The question is, how soon after? A. Probably two or three days after.

Q. At that time had you asked Richardson to give back any letters to Haddock? A. I guess not.

Q. So that the giving up of these bonds had nothing to do with Richardsons giving up Haddock's letters in exchange? A. Not that I know of. I do not see any connection.

Q. Did you state to Richardson how much any party beside him must have for the surrender of those bonds to him, in case they were surrendered? A. No, sir, I did not.

Q. On your return on that occasion from Rochester, was Collins at Baggs' Hotel? A. As I got off the cars, he and Richardson were both there.

Q. Did you have a conversation with Collins as to what happened at Rochester? Yes, sir.

Q. Did Collins give you a written memorandum of what you were to do with Haddock when you went back? A. Yes, sir.

Q. Where is that memorandum? A. I think it is among my papers somewhere.

Q. Did you show it to Major Haddock? A. I think I did.

Q. You heard Collins enumerate, on his examination, the things that memorandum contained, did you? A. Yes, sir.

Q. Did he enumerate anything which it contained, and which you say it did not contain? A. I think not.

Q. Now you have said that on the 10th of March you went to Rochester with Richardson? A. Yes, sir.

Q. And that Richardson and Haddock retired to a room and had a conversation of 15 or 20 minutes. Was that the room you and Haddock occupied that night? A. It was.

Q. Did you sleep together? A. We did.

Q. After you entered that room that night, how soon did Aaron Richardson leave it? A. Very soon.

Q. How soon? A. I should think in three or five minutes.

Q. Now I want you to relate to the Court, as it must be very short, what the conversation was before he went out, and the whole of it? A. I cannot recollect what the conversation was.

Q. Can you recollect a word of it? A. I do not think I can.

Q. Nor the subject to which it related? A. No, sir.

Q. Is that all you can say about it? Can you give any explanation of your not recollecting? A. I do not think there was anything important said, nothing to be impressed upon my mind.

Q. Did you suppose on that occasion that Haddock was seeking, among other things, to get letters or papers back from Richardson? A. I did suppose so.

Q. Now then, after you came in, finding Richardson there, was anything said between Haddock and Richardson which led you to suppose so? A. Not at that time.

Q. You supposed so, therefore, for reasons you had previously to that? A. Yes, sir.

Q. And you cannot now state anything whatever that was said by you, or Richardson, or Haddock before Richardson went out of the room? A. I think not.

Q. You said, repeating it, I think, three or four times, that the main thing you asked Richardson for, after you came back, were the letters; that you considered that of more consequence than anything else. What else did you refer to, when you said that

was the main thing? A. I made use of that expression to him because I desired him to suppose that negotiations were going on in such a way that he might expect those orders finally.

Q. I ask you what you mean when you say that the main thing you sought from Richardson were the letters? A. It was the main thing, I said, *then;* I meant when I said "*then*" to have him understand these negotiations going on; he might suppose Haddock would accept the $5,000 and give him those orders, and that there were other things in the matter besides the mere giving up of the letters, otherwise there would have been no motive to lead him to do it.

Q. Then the proposition you put to him was, that he was to give up the papers and pay the $5,000? A. I did not put that proposition to him.

Q. You understood, then, that by giving up the letters and paying the money, Richardson supposed he was to get certain orders? A. That is the idea.

Q. What were those orders he was to get? A. They were the orders recited by Collins in the memorandum.

Q. How many times in all did you ask Richardson to carry out that arrangement, whatever the form of words were you used? A. I probably spoke to him three or four times.

Q. How many times did you speak to Collins about it? A. I may have mentioned it to him once or twice, and inquired of him whether Richardson was ready to have the matter consummated.

Q. Where ; do you now testify that you first heard that Haddock was to have $5,000 on that occasion ? A. I think Richardson first mentioned it to me in my office after my return.

Q. How soon after your return ? A. It must have been directly after.

Q. And that was after you came down from Rochester ? A. Yes, sir.

Q. You and Richardson came down together ? A. We did come down together in the morning.

Q. What time did you reach Utica ? A. The train broke down and we were delayed at Syracuse, and whether we came on from there together, I do not remember.

Q. What time did you reach home ? A. I think that night.

Q. And you say that some day or night in your office Richardson told you that Haddock was to have $5,000. A. Probably it was not until the next day.

Q. Was anybody present when he told you of it? A. I think not.

Q. And do you now testify that that was the first time you heard that Haddock was to have $5,000? A. It was so far as I recollect.

Q. Do you mean to deny that you told Collins, as he stated, that Haddock was to have $5,000? A. I do not think I ever told him so. I do deny it on my recollection. I may have told him at a subsequent time.

Q. Do you deny his statement that several times during the day or two succeeding this, you told him that Richardson was a fool; that he had not got that money, &c.? A. I deny that I said it in the terms which he stated, that is, as to the $5,000 in money.

Q. Did Richardson deliver to you $5,000? A. He did.

Q. In what? A. In 7-30 bonds.

Q. Where? A. At my office.

Q. On what day? A. I think it was the 16th of March.

Q. Is that the $5000 that you say you called Major Haddock's attention to, but did not offer to him? A. Yes, sir.

Q. You never had the currency for it, but simply the bonds? A. Yes, sir.

Q. Those 7-30 bonds are numbered, are they not? A. I suppose they are.

Q. So that each bond has a number upon it peculiar to each bond? A. Yes, sir; all bonds are numbered.

Q. Where was it you called Major Haddock's attention to that? A. At his office in Elmira.

Q. Did you not meet Major Haddock at Canandaigua, after receiving those bonds? A. No, sir.

Q. Had you no appointment with him to meet him at Canandaigua? A. No, sir; I went directly from Utica to Elmira.

Q. You did not at any point about that time meet him at Canandaigua? A. Yes, sir; I did.

Q. And how soon did you meet him at Canandaigua. A. I do not remember the day; I think it was previous to my starting for Elmira, on the 16th.

Q. How soon was it after you had been at Rochester? A. Very soon after.

Q. How soon? A. I think it must have been three or four days after.

Q. You met him at the Canandaigua House? A. Yes, sir.

Q. Did you sleep with him? A. Yes, sir.

Q. Was there anybody else there besides you and him? A. I think not.

Q. Who made that appointment? A. It was made by us mutually.

Q. By telegraph? A. Yes, sir.

Q. You did not have the bonds with you then? A. No, sir.

Q. How long were you gone from Utica on that occasion? A. I was out there one afternoon and night, and back the next morning.

Q. Had you any business with Maj. Haddock then, except this Richardson matter? A. No, sir.

Q. And that meeting was upon the subject of these transactions of Richardson? A. Yes, sir.

Q. When did you next meet Maj. Haddock? A. On the 18th.

Q. That was when you had the $5,000 of bonds? A. Yes, sir.

Q. Did you carry anything else except the bonds? A. I carried the memorandum Collins furnished me.

Q. Are you sure of that? A. Yes, sir.

Q. Do you not know that Collins gave you that memorandum on the 5th of March, and not at the time the bonds were given you? A. I think not, but I am not certain I had the memorandum.

Q. Do you think you took the bonds at the same time the memorandum was given? A. I do not know, but I know I had them both at the same time.

Q. Did you not testify that you took the memorandum from Collins on the 5th of March? A. My impression is that I did take the memorandum then, but I had it also on the 16th.

Q. Did you not start for Elmira on the day after you took the memorandum? A. Yes, sir.

Q. Which was on the 6th of March? A. Yes, sir.

Q. How long were you in Elmira at that time? A. I could not have stayed long; I got back to Utica, so that I left there again on the 10th.

Q. Did you have any business at Elmira on that occasion except Richardson's? A. Yes, sir.

Q. What? A. This matter of the money that had been deposited by McIntosh's clients.

Q. Had you any business except that and Richardson's matters? A. I think I had, I think I had some other business.

Q. That was the occasion when you answered the counsel for the accused, that Haddock said he would not do any thing more until he saw Richardson himself? A. Yes, sir.

Q. Now do you say you kept the same memorandum, and took it again to Elmira when you went to see about the bonds? A. That is my impression.

Q. And when you got there you called Haddock's attention to the fact that you had those bonds? A. Yes, sir.

Q. Did you show them to him? A. I exhibited the outside.

Q. Did he look at them? A. He did not.

Q. But he saw the outside, so as to see what they were? A. Yes, sir, he saw the nature of them.

Q. And he then said he had made up his mind not to have anything more to do with Richardson? A. That was the substance of it.

Q. When was it Maj. Haddock told you that Richardson had a paper he wanted to obtain relating to credits? A. My impression is that he spoke to me of that at the meeting at Canandaigua.

Q. That was this meeting you appointed with him by telegraph? A. Yes, sir.

Q. On that occasion did you learn of any other particular paper by description? A. I do not recollect that I did.

Q. Did you learn, on that occasion, at what time this paper was parted with to Richardson? A. I did not.

Q. Now at what time was it you say Richardson first told you that inducements had been held out to him to inform or take part against Haddock? A. I have no means of fixing the date.

Q. What month was it in? A. I think it was March.

Q. Can you tell what part of March it was in? A. I cannot.

Q. Was that after detectives had been, as you understood, at Utica, and elsewhere in the western division, trying to ferret out these frauds? A. I do not recollect it in relation to that fact. I do not know whether it was before or after.

Q. You have said that some letter from Major Haddock stated that fact. How was it in reference to that time? A. I am not able to say. It was not a matter that impressed me particularly at the time.

Q. Where was it that he first spoke of that? A. The occasion he spoke of it, when I connect the idea of place with it, was in my office, standing by the window.

Q. Was that the first time? A. I think he had attended to it before.

Q. Can you repeat any conversation you had with him before? A. Yes, sir; I had heard him say before, that they were after Haddock.

Q. Anything else? A. That was about the substance of it.

Q. Who was present on this occasion in your office? A. Nobody.

Q. Be good enough to tell exactly what he said, and what you said, and the whole of it, in your office? A. I can tell the substance. He introduced the subject by saying there were movements going on to remove Major Haddock, and that the other side had bid high for him, and that large inducements had been held out to him to make a case against Haddock.

Q. Did he use the expression, "to make a case against him"? A. Perhaps it was, to make a case, or to give evidence, or to say something against him.

Q. What did he say precisely? A. I think the remark was, "to make statement against Haddock."

Q. What else upon that subject? A. That is all.

Q. Did you say anything to him? A. Not much. I simply heard his talk about it.

Q. And did he ever on any other occasion say anything of that sort to you? A. On no occasion subsequent to that.

Q. Did you know at that time that detectives had been sent from Washington to report to the present Judge Advocate with regard to frauds in the western division? A. I did not know it at that time.

Q. You knew it subsequently? A. I subsequently learned that such was the fact.

Q. Did you indicate to Major Haddock the fact, when you found that it was so, that detectives had been sent from Washington to report to the present Judge Advocate? A. I do not think I did; I did not know until now that they were directed to report to the Judge Advocate; I did inform him of the fact at the time Major Luddington and some other parties were at Utica.

Q. Was Luddington an inspector sent from the War Department? A. Yes, sir. And then F. M. Ellis was there.

Q. Did you inform him that Major Luddington had reported to or seen the present Judge Advocate? A. I reported that he had

been in Utica; I did not connect the name of the Judge Advocate with it.

Q. Did Collins show you a letter written by Major Haddock to Capt. Crandall, which he brought from Elmira? A. I think he did.

Q. Did you read it? A. I think I did.

Q. Did you tell Col. McQuade of that letter? A. I do not now recollect whether I did or not.

Q. Did you write to Major Haddock immediately after that? A. I think I did.

Q. Did Col. McQuade write to him immediately after that? A. That I do not know.

Q. A word about this conversation. Did you tell Collins that Richardson should pay you $2,000, not for what you had done, but for what you had not done to him? A. No, sir; I never told him that.

Q. Nothing to that effect? A. No, sir.

Q. You did not tell him that in your office upon the occasion when you and he talked about the bonds? A. No, sir.

Q. And you did not tell him you ought to have $2,000 for what Major Haddock had not done to him? A. No, sir.

Look at the letter I hand to you, and state whether it is in your handwriting, signature and all? A. It is.

Q. You spoke of your getting changed the Verona credits? A. I did not speak of my getting them changed, but of applying for it.

Q. How much were you to have for doing that if you got them changed? A. I do not know as any agreement was made.

Q. Was no specific amount stated for that? A. I think Richardson told me he would pay me a considerable sum if I would.

Q. Was it $2,000? A. My impression is, it was $500.

Q. Did you tell him in the course of this week we have been speaking of, after coming back from Rochester, that if he would have the money ready and those letters, that the Verona credits would be changed. A. No, sir.

The Judge Advocate here offered and read in evidence the said letter of the witness, as follows:—

UTICA, *April 4th*, 1865.

MY DEAR HADDOCK:—I enclose herewith Crandall's explicit statement in regard to the money left with him for Doyle, Ryan, Thompson and Cavanaugh.

Being made by him in relation to his official acts, I did not ask him to verify it by oath, but it is undoubtedly the statement he would make under oath, and will justify all concerned in acting upon it.

I hope to get from headquarters a favorable consideration of this matter, as I take a personal interest in it. McIntosh would have notified Crandall not to pay over this money had I not advised him not to object, and said to him that he would not be prejudiced by it.

P. S. Since writing *via* another, I have seen the person alluded to in that letter, and he denies having dispossessed himself, as rumor declared, and says matters are in *statu quo*. Crandall, he says, has secreted the bonds, so that the sheriff cannot get access to them. I think the pressure that Hunt is bringing upon him in this matter is for the purpose of coercing him into an alliance against you. If this should be the fact, it would be suggestive. Would it not be well to relieve him from the other quarter?

He asserts that he has done nothing, and contemplates nothing in any way hostile to you. Of course this has no weight, except in disclosing the attitude which he wishes me *to suppose* he occupies. You will judge for yourself as to the probable truth.

He also says that he received a letter from you to-day, of about the 27th, which accounts he says for his not attending to the matter referred to in it. As ever, truly yours,

GEO. W. SMITH.

Major Jno. A. Haddock, Elmira.

On a blank page was the following:

"I am *very anxious* for a favorable result in respect to the enclosed matter."

Q. I observe in your letter something scratched out before "via another." What was that? A. It was to be "per hand" or something of that kind.

Q. By whose hand was it? A. I do not recollect now.

Q. Was Mr. Hunt alluded to in that letter; Ward Hunt? A. Yes, sir.

Q. Was he the counsel for the Government in the suit brought by Richardson to recover those bonds? A. He was.

Q. And is the "person" you refer to in the letter, Aaron Richardson? A. Yes, sir.

Q. The same person who denies that he has "dispossessed" himself? A. Yes, sir.

Q. And what did you mean in this letter when you said "would it not be well to relieve him from the other quarter"? A. My idea was this, that Mr. Hunt was defending this suit for those bonds vexatiously, or while, in my opinion, Richardson was entitled to them by law, there was a vexatious delay made by the suit. And what I suggested here was, it would be better for Haddock to make an order to give up the bonds and relieve Richardson in that way, and in that way prevent his hostility against him.

Q. That he had better make an order to have the $20,000 of bonds given up, and prevent his hostility against him? A. Yes.

Q. Were you, as county commissioner, to decide upon draft exemptions? A. At one time I was.

Q. When was that last? A. In 1862.

Q. And under the State draft, when more recently? A. For the last year.

Q. While Henry T. Utley was you partner? A. Yes, sir.

Q. Did you and Mr. Utley at that time both make out papers for the exemption of men from the draft? A. We did.

Q. Papers which you passed upon? A. Yes, sir.

Q. And you and he shared the profits of it, did you? A. Yes, sir.

The court here took a recess until half past three o'clock.

At half past three o'clock the court resumed its session, and the examination of the witness was continued.

Q. On the occasion at Rochester on the 6th of March, when Mr. Howard was there, did Richardson write a letter to Major Haddock and show it to you? A. Yes, he wrote a letter.

Q. Where did he write it? A. I think in the reading room.

Q. Did you read it? A. I think he did show it to me.

Q. Repeat what it contained, so far as you remember? A. I do not recollect its contents at all.

Q. Was that letter it substance this: that he regretted his not meeting him; that he was dissatisfied with his not having done as he agreed; that he might know from what Collins had told him that his funds were tied up, and that he had made arrangements to raise and send him $5,000? A. I have no recollection of that.

Q. Is that all you can say about it? A. Yes, sir.

Q. Why cannot you recollect what that letter contained? A. I paid very little attention to it, and until the question arose here I had forgotten the fact of the writing of the letter.

Q. Did you, after reading the letter he wrote, say to him that

the letter would satisfy the Major? A. I do not recollect saying it, and I do not think I did.

Q. Is that all you can say? A. Yes, sir.

Q. And you cannot, as you say, relate a word that that letter contained? A. I cannot.

Q. Did you go to Lewis county seeking to arrange contracts there for Richardson? A. No.

Q. Did you go to Lewis county seeking to get any contracts for Richardson? A. Not in Lewis county; I negotiated at Watertown, and somewhat at Utica, to put in men for Lewis county.

Q. For Richardson? A. No, sir.

Q. For whom? A. For myself.

Q. Were you in the bounty broker's business? A. No, sir.

Q. Were you in the business of putting in men separate from Richardson? A. No, sir; nor with him.

Q. How do you say that then? A. At the request of Martin F. Hamilton I went up to see if contracts could be obtained for putting in men in Lewis county, the men to be furnished by a man by the name of Brown.

Q. Then you did not make any efforts anywhere to get contracts for Richardson in Lewis county? A. I think not.

Q. Do you say you did not? A. I have no recollection of doing it.

Q. Did you write a telegraphic despatch to Richardson or Collins in regard to contracts in Lewis county? A. I do not know that I did. It seems to me, while I was at Watertown upon this matter, at the request of Hamilton and Brown, I did telegraph something upon that subject either to Collins or Richardson. It was to see whether they could furnish men.

Q. And yet you say you did nothing about contracts in the Lewis district for Richardson? A. I intended to make contracts on my own account and see if I could get Richardson to fill them.

Q. How many days did you spend there doing that? A. Two or three days.

Q. Did you go more than once? A. I think not.

Q. Do you, as county judge, in connection with two justices of the peace, have the appointment of the excise commissioners for the county of Oneida? A. Yes, sir.

Q. And the appointment is made by the Court of Sessions, is it not? A. Yes, by those three officers.

Q. Of which you are the chief one? A. Yes, sir.

The counsel for the accused objected to this course of examination as irrelevant and immaterial.

The JUDGE ADVOCATE stated that he offered to show by this witness, in order to destroy his credibility as a witness, that, being county judge of Oneida county, he drew up, and induced the commissioners of excise appointed by him to sign, an appointment of himself as prosecuting attorney of the board of excise in causes to be decided by him as judge; that this act was secret; and that subsequently he exacted, and accepted, and took and kept as a bribe, the sum of $500 in money from Samuel J. Barrows, and agreed, in consideration of it, to procure and insist upon the appointment of Barrows by the excise commissioners; and agreed, as a further consideration of it, to appoint a particular man as excise commissioner for the purpose of enabling Barrows to retain the office of attorney for the board. And, in connection with that, the Judge Advocate offered to produce to the witness the evidence in writing of the receipt of the $500 bribe for the purpose indicated.

The witness indicating his desire to answer the question, the objection was waived.

Q. Did you draw up an appointment of yourself as attorney of that board? A. I did.

Q. Attorney of the excise board? A. Yes, sir.

Q. Did you obtain to that paper the signature of Almon W. Reynolds, George F. Weaver and Samuel P. Lewis? A. Yes, sir.

Q. Were they the commissioners of excise whom you had appointed, you and these other two men? A. Yes, sir.

Q. Was that paper ever made public? A. I do not think it was; I showed it to several individuals.

Q. You never made it public, did you? A. I never published it.

Q. Who was the attorney of the excise board at the time that paper was signed? A. Samuel J. Barrows.

Q. Was it the business of the attorney of the board to prosecute for violation of the liquor law? A. It was.

Q. His sole duty was to conduct prosecution against men for those offenses, was it not? A. Yes, for violations of the excise law.

Q. After that paper was signed, and appointment made, and how soon after was Barrows appointed attorney of the board in your place? A. I [illegible] appointed a

Q. This was an appointment of yourself you have been speaking of? A. Yes, sir.

Q. Who after that was the attorney of the board? A. Barrows was before, and remained so after.

Q. Do not you know that a resolution of the board was passed appointing him? A. I have no personal knowledge of that.

Q. Did not you understand it so? A. I do not know whether I have heard it so stated or not. I think I did.

Q. Look at the check I hand you. Did you ever see it before? A. Yes, sir; I received that check from Barrows.

Q. Did you deposit it in the Bank of T. O. Grannis? A. Yes, sir.

Q. Is the deposit check I hand you the check indicating its deposit? A. Yes, sir, it is.

The Judge Advocate thereupon offered and read in evidence the said check and deposit check as follows:

UTICA, *March* 22, 1865.

UTICA CITY BANK:

Pay to S. J. Barrows or order, bearer, two hundred forty-five $\frac{48}{100}$ dollars, $245.48.

DISCOUNT.

UTICA, *March* 22, 1865.

Deposited in T. O. Grannis & Co's Bank, by Geo. W. Smith.

Bills	$254 00
Specie	52
Checks	245 48
	$500 00

Check was endorsed S. J. Barrows.

Q. Where did you receive that check from Barrows? A. At his office.

Q. What did you receive with it at the same time? A. The remainder of that money stated in the deposit check.

Q. Making up the $500? A. Yes, sir.

Q. And the whole you deposited in T. O. Grannis' Bank? A. Yes, sir.

Q. Was there a third person present? A. George F. Weaver.

Q. Was he one of those commissioners? A. He was.

Q. And did you in consideration of that agreement allow Barrows to keep this office, and did you destroy or give up to him

that appointment of yours? A. I gave him up the appointment; the consideration for which he paid me the $500 was, that I should give him up that paper.

Q. Did you also agree at that same time to reappoint a certain man commissioner? A. I believe I did.

Q. That was another part of the consideration? A. It was no part of the consideration; that was a thing started subsequently.

Q. Was not that stated in the same interview in which he paid you the money? A. It was stated in the same interview.

Q. That you would give him up the appointment, and that you would reappoint a certain member of the board? For what purpose were you to reappoint him? A. It was not stated.

Q. Was it not expressly stated that it was to the end that Barrows might, at the expiration of the present board, hold his office? A. I do not think it was.

Q. Do you say it was not? A. I think it was not; the sole consideration of the $500 was to give him up the appointment, and allow him to do the business that I might do under it.

Q. Do you know William B. Taylor and James G. French? A. I do.

Q. Did they come to you and Mr. French first, and apply to you for that appointment? A. They did; they applied for my influence.

Q. That was before you got the appointment from this board? A. Yes, sir.

Q. They applied to you for your influence as county judge? A. Yes, sir; though that was not expressed.

Q. Did you offer to French to have him appointed, or to give him your influence if he would pay you a certain proportion or amount? A. Not exactly that.

Q. Did you propose exactly that to William B. Taylor? A. No, sir.

Q. Did you offer to each of those men to give your influence to French's appointment, if he would divide with you the avails of the office? A. No, sir; not in that form.

Q. Did you make to them, or either of them, any offer to give your influence to French, or give him the appointment upon the consideration of a division with you in any way of the avails of the office? A. Yes, sir; in a particular way.

Q. You did then offer to appoint him, or give him your influ-

ence upon consideration of a division of the avails of the office, in a particular way? A. Yes, sir; and I will state it, if you will permit.

Q. Now, then, did you receive a portion of $300, which Barrows paid previously to another person for this office? A. No, sir.

Q. Do you know of his paying any sum of money for being appointed the time before, when he was appointed? A. No, sir.

Q. You never heard of any such thing? A. I have heard it stated.

Q. You say you did not participate in the money? A. Not in the slightest degree.

Q. Did you participate in the $100, which he paid at another time? A. No, sir.

Q. Did you, subsequent to the receipt of this $500, become a party to an arrangement or understanding by which men were not to be prosecuted for a violation of the Excise law, except upon consent of a certain individual? A. Never.

Q. Nothing of that sort? A. Nothing of that sort.

Re-direct examination:

Questions by Col. Woodward, counsel for the accused:

Q. Will you explain, as you wished, respecting the enlistment of this man Norton, who was taken out of jail? A. In the case of Norton, Henry T. Utley, my partner at the time, informed me, or I understood from him, that he had consulted with Justice Bacon of the Supreme court upon the subject of his being let to bail. It had frequently occurred in the Court of Sessions, and in the Court of Oyer and Terminer also, by the action of the judge who held the Court of Oyer and Terminer.

THE JUDGE ADVOCATE here objected to allowing the names of other parties to be brought in in this matter.

THE WITNESS: I will proceed then without giving names. What I wished to state was, that it had been the practice in both the courts in Oneida county to allow persons to be let to bail for offenses of larceny, and even burglary and passing counterfeit money, where they would enlist into the army. In this case, I was informed that the judge of the Supreme Court and the district attorney had been consulted, and that the judge of the Supreme Court had consented to allow Norton to be bailed, and to accept Utley to be his bail at $1,000, if Norton would consent to go into

the army. Those facts being represented to me, I let him to bail, although the bond produced to me was drawn really for the purpose of being taken before another of the judges; but, he being out of the city at that time, it was taken and acknowledged before me. It was my impression, when I commenced giving testimony here, that Norton was taken out of jail upon the order of another judge, and not of myself. I seem to have been mistaken about that; and one reason for my mistake was, that I was informed by another person that the order upon which he was produced was given by another judge, and not by myself. I was of the impression it was so done; and I will state, in that connection, that I never had anything to do with the payment of the money. I did not know who was paid, and had no sort of connection with it in any form. The matter of the enlistment of Norton was by other parties. A letter was written to Maj. Haddock to get authority to muster him, as a matter of accommodation to Utley. I had no interest in the money whatever, in any shape or form.

In regard to the appointment of Barrows, the case is this: Barrows was the attorney prosecuting civil suits for the Excise Commissioners. He had been an attorney for them sevrael years. The cases which he brought were not brought in my court, and they were not to be decided by me, as intimated in the offer of the Judge Advocate. The civil actions which he brought were not to be passed upon by me, except that suits in justices' courts might come up by appeal into the county court. No such instance as that ever happened during my holding the office, and if it had, I would have been disqualified from passing on them, if I had been attorney in the case so appealed. I obtained an appointment from the Excise Commissioners to do their business, and Mr. Barrows applied to me to surrender that appointment, and allow him the benefit of doing that civil business. I supposed the business to be worth a thousand dollars or more a year. I relinquished the appointment, and gave up the paper, which of itself restored him to his former possession as attorney, upon his offering to pay me $500, for the benefit of that business. I did not consider it was a bribe. It was simply the surrender of a matter of business, which I could control for a stipulated consideration. I see no evidence of a bribe in it at all.

Questions by the Judge Advocate.

Q. Was there more than one attorney to the Excise Board at that time in Utica? A. No, sir.

Q. Was there any designation in that appointment of that attorney, as to what kind of business he was to do? A. He had only civil business to do.

Q. Was he not the only organ through which the board spoke in the way of prosecution? A. I do not understand it so.

Q. Who did, except Barrows, prosecute for that board at Utica? A. If they prosecute criminally, that would go into the hands of the district attorney.

Q. All the prosecuting which the Board of Excise do, takes place through the attorney of that board? A. All their civil suits.

Q. Answer my question. All the prosecutions they institute take place at the hands of the attorney of the board? A. They do usually.

Q. Did you ever know of an exception? A. I do not know as I ever did.

Q. Was there any place to which suits brought into courts of justices of the peace of Oneida county, were appealable except to you as county judge? A. No, sir.

Q. And they were appealable to you alone, without any associates with you? You were the sole Judge, were you not? A. Yes, sir.

Q. Was there any place except the Court of Oyer and Terminer in which indictments for violation of the liquor law were triable, except the Court of Sessions in which you were the Chief Judge? A. None other.

Question by the Court.

Q. Did Richardson in any of these conversations in which he complains of Maj. Haddock not having favored him, say that he could have got along just as well alone, &c. State why or on what grounds he claimed or expected Maj. Haddock to favor or assist him in his business, and if so repeat what he said? A. I have no recollection of his stating any ground on which he expected it.

In reference to the appellate jurisdiction of the county court, I wish to state that had I acted as attorney for the Board of Excise in a justice's court, that fact alone would have disqualified me from passing upon the case in court of which I was a judge. The statute makes it my duty, in such a case, to transfer it at once into the Supreme Court, so that I could not possibly act in such a case.

Question by the Counsel for the Accused.

Q. Judges of county courts are allowed to practice in other courts? A. Yes sir, in all cases except in those courts where they are to act as judges. They have the same right to act as attorneys as any other member of the bar. So that I repel the idea that there was possible any such thing as my deciding a case in which I was attorney. There is another point, and that is in regard to the matter of exemptions under the draft for the National Guard of this State. The cases which the Judge Advocate referred to, of papers drawn by Mr. Utley and myself, were cases where parties came and stated their cases, and if found sufficient, the affidavits were drawn, and we charged them for the drawings. They could have got anybody else to do it, but if we did the work we charged for it.

Question by the Judge Advocate.

Q. And those were in cases passed upon by yourself? A. Yes, sir. I wish further to make a statement in reference to the proposition for Mr. French to be appointed attorney to the excise board. The proposition in that case, which I say was made for a division of the profits, was that Mr. French and myself should become law partners in doing that business; and in that case he was to have one-third, and I two-thirds of the profits of the business. It was by means of a partnership, at any rate.

Q. And that was the consideration and condition upon which you offered to use your influence to get French appointed? A. Yes, sir; it was with a view to such a partnership as that, at any rate, that I proposed to get him appointed, a partnership, as I understood it, entirely lawful.

The evidence of this witness as above recorded was read over to him, and was acknowledged by him to be correct, but he wished to make the following statement by way of correction and explanation:

I should not have said "I slept with Major Haddock at the Canandaigua House, if I did say so; as we occupied separate rooms. I wish to state also that the meeting at Canandaigua was on the 24th of March. I stated that it was three or four days after the interviews at Rochester, on the 10th, and it was fourteen days after.

I wish also to state the reason of the late meeting at McQuade's office: Major Haddock, McQuade, and some other parties mentioned and myself, were detained there until that late hour of the

night, preparing complaints and charges against the administration of the provost marshal's office, under Capt. J. P. Richardson.

July 17, 1865.

The witness was recalled for the defense and examined as follows:

Questions by the counsel for the accused:

Q. As you found yourself in error in reference to the matter of the bailing of Norton on your order, please explain how it was. A. If the court please, I had entirely forgotten the giving of that order, and one of the main reasons, I suppose, why I had forgotten it, was my supposing that Norton was brought out upon the order of another judge, and that I made no order in the matter. I certainly recollect none, and felt confident I had not made any, because I knew another judge had made one, or supposed he had; and on looking at the files where such orders are kept in the office of the jailor, I found such an order, and I wish to give it in evidence here, inasmuch as the other has been.

The counsel for the accused offered and read in evidence the said order, as follows:

THE PEOPLE,
vs.
CHARLES E. NORTON.

To the Sheriff of Oneida county:

Bring before me Charles E. Norton, defendant in the above entitled case, for the purpose of letting him to bail.

W. J. BACON.

UTICA, *December* 27, 1864.

Q. Is Judge Bacon a judge of the Supreme Court? A. He is.

Q. Is the signature to that order in his handwriting? A. It is. The body of the order is in the handwriting of Mr. Utley.

Q. Is that all you wish to say? A. I will say further that I understood from Mr. Utley——

[The Judge Advocate objected to a recital of this conversation, because it had been previously detailed and spread upon the record. The question was waived.]

Q. Is the attorneyship of the board of excise an office created by law? A. It is not. The board of excise select their attorney as they choose. There are no legal regulations upon the subject. They have a clerk who has an official status by statute. The statute creates the office and prescribes the manner of filling it.

The attorney stands in no relation to the board of excise except that of mere employment. It is a mere matter of custom and convenience that they appoint a particular man to conduct their suits, but they do not do it under legal regulations. They select several attorneys in the county; they have one in Rome, one in Annsville, and they had one in the town of Remsen, to attend to their suits for them. They find it a matter of convenience to select sometimes one attorney and sometimes another.

Q. What had you to do with the subsequent action of the board in appointing this man Barrows? A. Not any.

Q. Did you ever request Mr. Lewis or Mr. Reynolds to appoint him? A. I never did. I did not know that any action was taken upon it in that way until afterwards. I supposed that giving up the appointment I held would probably in fact restore him to the business he had been doing before.

Q. Had you said to Weaver, before the time of the interview between Barrows and himself, that you would go for his appointment?

The Judge Advocate objected to the witness stating what was said between him and a person named voluntarily by him, and on an occasion not referred to in this evidence. (Question waived.)

The witness: It is suggested, in that connection, that there was a paomise made to re-appoint Mr. Weaver, and that it was a part of this transaction. I have to state in reference to that, that I had told Weaver before that time, and without any connection with this affair, that I was desirous of his re-appointment. I wish to make another statement, which may possibly amount to a correction of my evidence. I stated on Friday that I had applied to Maj. Haddock for some twelve or more orders, and that only three of them had been granted. I wish to state that the two last orders, dated the one on the 9th of March and the other on the 14th, with reference to recruiting at other points in the Western Division besides Utica, are both substantially the same orders, but they are directed to two different officers, the former to Capt. Crandall and the latter to Maj. Beadle. I am not sure but I made some application for that order which was directed to Capt. Crandall, the one of the 9th of March. I do not recollect the matter distinctly, but I wish it understood that I might have made application for it. So that, in one sense, there may have been granted

four orders upon my application, though two of the orders are apparently the same thing.

Q. Did you know of the order allowing three-eighths of the bounty to be assigned by the recruits to others, being issued before you left for Elmira? A. I do not think I did. I left Utica, so that I arrived at Elmira probably on the 9th. I stayed over at Syracuse one day, and the probability is that when I left Utica I was not aware of that order. Possibly I may have seen it, but probably I did not.

Questions by the Judge Advocate.

Q. Where did you get this order of Judge Bacon? A. At the jail on Saturday.

Q. From Mr. Barnes the jailor? A. Yes, sir.

Q. Was this man Norton, as I understand you, brought up on this order? A. Once.

Q. And he was remanded by the judge to the jail? A. I did not understand that he was remanded by the judge.

Q. He was taken back, was he not, to the jail? A. I suppose he was.

Q. That is being remanded, is it not, by somebody? A. To remand is an order made by judicial authority to take him back.

Q. If he is not let to bail but is returned to jail, he is legally remanded, is he not? A. In one sense he is.

Q. Norton was never brought out of jail and bailed except upon your order? A. I suppose not.

Q. Will you name any case in which a judge of the court of oyer and terminer ever admitted a man to bail for burglary, or any such offense, upon condition that he would go into the army? A. I did not say that it was done in cases of burglary.

Q. Name any case in which a man was bailed in the oyer and terminer for passing counterfeit money upon any such condition? A. I do not know that I can name a case particularly of counterfeit money.

Q. Name one case in which for grand larceny, a man was ever bailed by the oyer and terminer in Oneida county, upon condition that he would go into the army? A. I do not know what action has taken place in the oyer and terminer.

Q. Answer my question? A. I can state only what I have heard.

Q. You understand the question, do you not? A. Yes; and I understand it is a very unfair one, too.

Q. You have stated that the court of oyer and terminer had made a practice of allowing men to be bailed for burglary, larceny, and passing counterfeit money, upon condition that they would enlist into the service of the United States? A. I so understood it.

Q. Now name one case, in which even for larceny, in the oyer and terminer of Oneida county, a man has been admitted to bail on such conditions? A. I cannot name a case, because I do not sit in the oyer and terminer.

Q. Can you name any case in which any judicial officer, high or low, in Oneida county, except yourself, has admitted any man to bail for any crime, upon condition that he should go into the army? A. I have heard of such cases.

Q. I ask you to name any such case? A. I say I cannot name any such case upon my own knowledge, but I have heard of them.

Q. You think you got to Elmira on the 9th of March? A. I judge so by the date of the earliest of those letters.

Q. Do you think you and Major Haddock knew, on the ninth, whether he had issued such an order on the 7th? A. I presume he must of course have known it.

Questions by the Counsel for the accused.

Q. If you know, I would like to have you state why Norton was sent back to jail after having been brought up by Judge Bacon? A. I cannot state beyond what I have heard.

Q. Do you know whether he was taken out upon that order? A. I suppose he was; I was so informed. I wish to state in regard to the practice of the court, that in the case of Boyd—Wm. Boyd, I think—who was let to bail in the sessions, and who was charged with passing counterfeit money, he went into the army, as I understood, upon the assurance of Judge Bacon that if he would do so, he should be let to bail.

The Judge Advocate objected to bringing in the names of third parties as incompetent.

The court was cleared for deliberation, and after a short time so spent, the doors were opened, and the PRESIDENT of the court, and in open court, in presence of the accused, announced that the court had decided that the witness can, by way of explanation, if he desire, for his admitting Norton to bail on con-

dition of his entering the army, state that he was informed and understood by persons entitled to credit, that the other judges of Oneida county had admitted persons charged with larceny, &c., to bail on this condition, that it had frequently occurred, and that the witness understood that the practice had received the approval of one of the justices of the supreme court, but not to go into details of particular conversations with persons, or in regard to cases not referred to either in the examination in chief, or cross examination.

The WITNESS: Under that permission I will say, generally, I understood that practice had prevailed in the court of oyer and terminer, that is, that that had been done in several instances, and at last had had the approval of the judge who held that court, and who was the presiding officer in it. And that, I understand, was frequently done in both the courts of that county. I perhaps should not say that the practice prevailed in cases of so grave a nature as burglary, though it is my impression that there were cases of that sort, but certainly in cases of larceny, passing counterfeit money, and crimes inferior to burglary, that has occurred, I was informed in many instances; and I think also in cases of burglary. In the case of Norton, I supposed I was not only bailing him under the express sanction of a superior judge who had been consulted upon the subject, but that it was in conformity to what had grown into custom in that county in similar cases. In the case of Boyd, if I said he was bailed in the sessions, I wish to correct it. I do not know whether he was bailed there or not. The question came up in the sessions, whether the bail should or should not be prosecuted. Whether the bail was given there or not, I am not prepared to say.

The evidence of this witness, as above recorded, was read over to him, and was acknowleged by him to be correct.

The Senate adjourned to meet on Thursday, August 30th, at 9 o'clock A. M.

SEVENTH DAY.

ALBANY, *August 30th*, 1866.

The Senate met pursuant to adjournment.

A quorum being present, the journal of the previous day was read and approved.

MR. SEDGWICK: We propose now to read in evidence the two letters and the several telegrams referred to in the evidence of Judge Smith, which was read yesterday.

MR. SHAFER: Mr. President, we have no objections of course to the reading in evidence by the prosecution, of such letters and telegrams as are referred to and *identified* by the evidence of Judge Smith. But except as they are identified, distinctly, intelligently and certainly in that evidence, we object. And when the counsel will point out and designate a particular letter or telegram he proposes to read, and enables us to see whether it is identified, then we will make specific objections.

MR. SEDGWICK: I propose to read a letter of Haddock to Lieut. Col. Poole, acting Provost Marshal at Elmira, dated 10th of January, in reference to the construction of order No. 28.

MR. SHAFER: That is fully detailed in the evidence.

MR. SEDGWICK: The counsel is mistaken. It was read in the opening I believe. The one read in evidence was a letter of Judge Smith.

MR. SHAFER: I may be mistaken. I don't object to the reading of these letters, because they are fully identified.

Mr. SEDGWICK: I will read in evidence, first, the letter of January 10th, 1865:

"HEADQUARTERS A. A. PROVOST MARSHAL
"GENERAL AND SUPERINTENDENT OF VOL.
"RECRUITING SERVICE, WESTERN
"DIVISION, STATE OF NEW YORK.
"ELMIRA, N. Y., *Jan.* 10, 1865.

"Lieut. Col. POOLE, *Acting Provost Marshal, Utica, N. Y.:*

"Colonel—The true construction of order No. 23, Department of the East, dated March 25, 1864, and promulgated from this office, with an intimation that the spirit of that order would govern one in passing upon cases arising in this division, will be held by

me to be that if recruits or substitutes are fully informed by the Provost Marshal of their rights as to local and Government bounties, they may hereafter assign to any person such portion of their local bounty as they may elect, not exceeding five-eighths thereof. The Provost Marshal should take pains to inquire fully into bargains made with recruits and substitutes, and hold both parties to a strict performance of their agreements, not forgetting that recruiting agents have rights that should be respected, as well as recruits or substitutes.

"I am, colonel, very respectfully,
"Your obedient servant,
(Signed) "JOHN A. HADDOCK,
"*Major and A. A. P. M. G. West. Div. New York.*"

The next is a letter of the same date from Haddock to Poole, the Provost Marshal, respecting the employment of Collins, which is also identified and referred to:

"HEADQUARTERS A. A. PROVOST MARSHAL GEN.
"AND SUPT. OF VOL. RECRUITING, SERVICE,
"WESTERN DIVISION, STATE OF NEW YORK,
"ELMIRA *Jan.* 9, 1865.

Lieut. Col. D. W. C. POOLE,
Acting Provost Marshal, Utica, N. Y.

Colonel—I have the honor to inform you that I have acquaintance with Mr. J. W. Collins, of Utica, and know him to be a fine clerk. You will, unless good reasons are apparent to the contrary, treat enlistment papers made out under his direction and in his office, during the hurry of recruiting, as though made out by me for your recruiting clerks—taking care however to see that such papers are made out in conformity to law and regulations.

Very respectfully, your obedient servant,
(Signed.) JOHN A. HADDOCK.
Major and A. A. P. M. G.

I next propose to read the telegrams in respect to the meeting of the parties at Rochester, one of March 10th, 1865, from Richardson to John A. Haddock. The judge swears those meetings were arranged by telegram, and we propose to read the telegrams by which they were arranged. I propose to read the telegram from Richardson and Smith to Haddock. I propose to read the telegram from Geo. W. Smith to Haddock.

MR. SMITH: We object that they are not proved. Had you not better separate them?

MR. SEDGWICK: I don't care enough about the whole of these to raise a question and have a decision on each one separately. But to make the testimony a little more intelligible I propose to put them in evidence. I shall not take up the time of the Senate in any discussion. I shall offer them, but will not lay any great stress upon it. If they are objected to, and the Senate think they are not receivable, I am content. But I propose to make the offer, and let the counsel for the respondent object if they choose.

MR. SMITH: There is no proof on the subject.

MR. SEDGWICK: O, yes; it was proved yesterday that this meeting was arranged by telegrams.

MR. SMITH: Yes; but there is no proof that Judge Smith ever authorized the telegrams.

MR. SEDGWICK: I will proceed with my offer. I propose to read the telegram dated Rome, March 18th, from George W. Smith to John A. Haddock, on the same subject,—as to his coming there and sending instructions to the court-martial, and the answer to that telegram by Haddock.

MR. SHAFER: We object to it on the ground that it is not proved. They cannot read a telegram without proving it.

MR. SEDGWICK: I also offer to read another telegram from Haddock to Judge Smith in regard to the same meeting, and two in respect to the meeting at Canandaigua, which were spoken of by Judge Smith in his evidence as arranged by telegrams. I also propose to read the order from Haddock, of the seventh of January, referred to in the evidence of Judge Smith, in respect to the amount that was to be paid to substitutes under that order, and as to what portion of it should be transmitted.

MR. SHAFER: Do you mean the five-eighths order?

MR. SEDGWICK: I mean the three-eighths order; the order allowing three-eighths to be forwarded.

MR. SHAFER: That is not proved by Judge Smith's evidence.

MR. SEDGWICK: I also propose to read the list of credits referred to to various towns and wards in the city of Utica. These are all the papers I propose to put in evidence.

MR. SHAFER: These are not proved by Judge Smith's evidence. In support of this objection I want to remind the Senate of what was agreed to exactly. We were applied to by the prosecution to allow the deposition to be read without producing the stenographer. That we agreed to; and it was expressly stated

that we agreed to nothing in that record except what was stated in the deposition. If that proves the order, the telegrams and the credits, they have got it. If not, and they want to introduce an order, they must prove, in the ordinary way, that Haddock was provost marshal and that he made this order; they must prove the telegrams and Judge Smith's connection with them.

MR. LOW: I should like to hear the agreement.

MR. SMITH: There is no dispute about the agreement, or any pretense on the part of the prosecution that these papers are proved by Smith's deposition. That simply speaks about the meetings being arranged by telegraph. There is no pretense that they are proved. The agreement was that they were to read the deposition of Judge Smith in evidence, and nothing else, without calling the stenographer; that whatever was contained in the deposition was to be received in evidence, and nothing else. Now he goes to the record and picks out these telegrams, which are not in the evidence of Judge Smith, and are not proved at all.

MR. SMITH: I suppose the question is, does his testimony prove the genuineness of this paper? If not, they have no right to read it, and I do not understand them to pretend it does. We object that the genuineness of the papers offered is not proved.

MR. SEDGWICK: I propose to give in evidence these particular papers: The telegrams referred to by Judge Smith, being those arranging the meeting at Rochester, which he spoke of; also the orders which have already been read, and one other which was referred to in his testimony, but which has not been yet read. These papers were produced on the trial of Haddock, in which Judge Smith was a witness. We have the original papers; but we have not thought it worth while to produce the various telegraph operators, as we do not consider it of sufficient consequence to get subpœnas from the Senate to bring half a dozen telegraph officers from the different offices. We submit that being used on that trial and referred to by Mr. Smith as the telegrams which brought about this meeting, we have a right to read them. As I said before, I shall not trouble the Senate with any argument upon the subject, if the Senate think there is any force in the objection

MR. FOLGER: The counsel proposes to read these papers as identified. It may be that one may be identified by the deposition and another not; so it would be better to offer them separately.

MR. SEDGWICK: Except those which have been read, they all stand upon the same footing.

MR. FOLGER. I propose that each paper be offered by itself, and that the counsel refer to the testimony of Judge Smith, which he claims identifies it, and let us pass upon each one.

MR. SEDGWICK; I offer first, the circular dated January 7, 1865, issued by John A. Haddock, which is distinctly referred to.

MR. SHAFER: Judge Smith says expressly that he knew nothing whatever about that circular, and never saw it in any way or form.

MR. SEDGWICK here read the testimony of Judge Smith upon this subject,

MR. SHAFER: We deny that this is proved to be the circular referred to. The question is, what is the circular referred to by Judge Smith in his evidence? It is not identified in that evidence and they cannot read it. It won't do for the counsel to say that Judge Smith in his deposition referred to a circular of the 7th of January, and say that this is that circular, in the absence of identification. Now they pick up a certain paper which purports to be dated the 7th of January, sent by Haddock, and say that is the circular. That is what we deny. Let them prove it. It is not proven by that deposition. Does it give its terms? Does it give a copy of it? There is no pretense of that kind. And yet they allege that was the circular. Simply produce a paper here and say that is the circular. We say there is no such rule of law as that. It is outside the stipulation. Let us live up to the fair spirit of that stipulation. The counsel wanted us, for their convenience, to allow them to read that deposition.. We said yes. Now what is that deposition you have the benefit of? But, says the counsel, ingeniously seeking to mislead the Senate in that respect, inasmuch as that deposition refers to a circular, therefore we have the right to allege that that is that circular and read it. That we deny. It is a question of the identification of the circular, and they cannot read it in this manner *non constat*. Have they the right document here? What do they know about it? We deny a knowledge of its existence. There is no rule by which they can do it. If they can, they may pick up any document or any telegram that is in the entire record. They say that this is referred to in the evidence of Judge Smith, and therefore we will read it. But we say that is not the one referred to, and they must

identify it and prove it as the original, genuine circular from Haddock.

The question on the offer of the counsel for the prosecution to put in evidence the circular dated 7th of January, 1865, was put to vote and declared to be lost.

Mr. SEDGWICK: I now offer to read a portion of the testimony of John D. Collins,—which was admitted by Judge Smith in his evidence to be correct,—as forming a part of his testimony. It will be remembered by the Senators who listened to the testimony of Judge Smith, there was a certain memorandum spoken of several times. It was taken to Smith and also to Collins, asking certain things to be done for Richardson's benefit and convenience in recruiting, and that the question was put directly to Judge Smith, referring to the evidence of Collins, whether he remembered particularly of the requests, and whether he heard Collins' statement, and whether that statement was correct in regard to that memorandum, and he answered that he did. I now propose to read from Collins' testimony what that memorandum was.

Mr. H. C. MURPHY: What evidence have you?

Mr. SEDGWICK: It is in the record.

Mr. SHAFER: We have two objections. In the first place Judge Smith swears he heard the evidence of Collins, and that his evidence, as far as he recollects, was substantially correct. He does not say it *was* correct; but *substantially* correct. Now, the point we make is this: that by reading the deposition of Collins upon that occasion without calling Collins, or the stenographer who took his deposition, his evidence becomes secondary and hearsay. What do they propose to do? To read the deposition of Collins which is contained in this record, and which it was agreed they should not read under the stipulation as part of the evidence of Judge Smith, inasmuch as it is referred to. Now, I submit to the lawyers about this circle, that before they can read the deposition of Collins, even though he were dead, they must call the man who took that deposition. Even before that the stenographer must swear that he kept literally correct minutes of what the witness said. What do they propose to do? They pick up a paper in this record: without any proof that Collins was ever sworn as a witness and examined, without any proof of the correctness of the transcript, they propose to give it in evidence to read it as part of the evidence of Judge Smith. What we say is, that there is no proof before this tribunal that Collins thus testified. They say

Collins swore that the memorandum contained this. We deny it. How do they prove it? They pick up a record and say it is there where they had agreed that they should read nothing in the record except Judge Smith's deposition. They allege that Collins testified so and so; and that Judge Smith, when he was examined, said he heard Collins testify so and so, and that the testimony was substantially correct. We deny that he thus testified. How do they prove it? By picking up a record which it was agreed they should not use. They must call either Collins himself, or the man who took the deposition. They cannot get in evidence of this deposition in this way by any known rule of law.

Mr. SMITH: There is still another objection, I think. They cannot prove this paper in this way if Collins was upon the stand. They cannot prove the verbal admission of Judge Smith in any way as to the contents of a paper. This paper itself is the highest evidence. The admission of a party does not dispense with the production of the paper—itself the highest evidence.

Mr. FOLGER: Is the admission of the counsel as to the genuineness of this record in writing, or as to the use to be made of it? Does that admission, or that stipulation, assert the genuineness of the record of that testimony, or as a whole?

Mr. SHAFER: Not at all. There is no pretense that it does.

Mr. H. C. MURPHY: I understand this to be a record of the proceedings of that court-martial, which cannot be used as evidence in this case, because the defendant here was not privy to that record; but that, in order to facilitate the prosecution, it was agreed that so much of that record as contained the testimony of the respondent, and as was necessary for proof, should be used in evidence. Of course, I cannot see how we can read any other portion of that record.

Mr. SEDGWICK: The point, if your Honor and the Senators please, is this: The record of this trial, or a certified copy of it, is produced for the purpose of the convenience of the witness, not particularly for the prosecution, because we could have obtained the original record, and, if it was necessary, the stenographer to prove it. But, to save the necessity of the stenographer's appearing here, and the production of the original record which would have made it competent for us to prove what Judge Smith testified, as the declaration recorded by the stenographer, we have this copy of the record; but we do not insist on anything beyond the

strict letter of the admission that we were to read from that record the testimony of Judge Smith. Now, Judge Smith's attention is called to a statement of the contents of a memorandum given by another witness, whose evidence is in the record, and he says that statement is correct. We insist that that makes it a part of his testimony, precisely the same as if he had said, this paper annexed to the record is a true statement of what I went for to Haddock. It is precisely as much a part of his testimony, in substance and in fact, as if he had repeated *verbatim* what Collins had testified to as to the contents of that memorandum. That it is, in truth, a part of his evidence; that he adopts and confirms the statement of Collins as his statement.

MR. H. C. MURPHY: It does not appear, as I understand, from the evidence that that is the testimony of Collins.

MR. SEDGWICK: That is rather technical. We might produce the stenographer to prove that that is his record of the evidence on the trial.

MR. SHAFER: But you cannot refer to the record under our stipulation.

MR. SEDGWICK: When I produce the record and read from the record the statement which the counsel desired me to make as to the testimony contained therein, I suppose it is hardly competent to deny that this is a record of the evidence. Still, we might identify it, but it would make the case no stronger that I can conceive.

MR. FOLGER: That is why I asked, to know whether the genuineness of the record had been admitted.

MR. SEDGWICK: It was admitted in so far as it was produced in the opening and in the reading of the orders of the War Department, directing the court when it was assembled and in reading from the record what was confessedly the evidence of one of the witnesses. It would be pretty hard, I think, under these circumstances, to deny that this is a record of the testimony of the witness, and every witness in the case. That would be splitting hairs even finer than I think is the custom in the courts of law.

MR. STANFORD: I would like to have the counsel read the testimony of Judge Smith, referring to this paper.

MR. SEDGWICK read the testimony as requested.

MR. SHAFER: I dislike very much to entertain for a single moment a suspicion—on the contrary I expressly disclaim it now—that my learned friend desires to enlarge upon that stipulation.

I do not believe from his well known reputation for candor and fairness in the trial of causes, that he intends to enlarge the stipulation by an innendo that we admitted the genuineness of the record.

But we deny that we have admitted that it is a record. Says my associate, when he proposed to read the deposition of Judge Smith: "What do you read?" "I read from what purports to be a record—thus and so, or from the record thus and so—in a case between the U. S. Government on one side, and John A. Haddock on the other;" but I would ask whether the record has been offered in evidence in any way or form. I protest, and I ask the Senate to remember that when the gentleman undertook to speak of that record, and of the trial, judgment and sentence mentioned therein, he was stopped and he abandoned it, and relied no further on the record of the trial of Haddock. They undertook on the start to lug it in, and we took good opportunity to say that he should not refer to it except cursorily in his opening. Now what is the point? In the first place they seek to do what? They seek to prove the contents of a memorandum. Now, what is the first rule of law so well settled? If they propose to prove a memorandum they must produce it. What is a memorandum? It is a paper writing. It is something reduced to writing. If they propose to prove the contents of a writing or memorandum, they must produce it, or show that it is lost or destroyed, or beyond their power to produce it. I appeal to the lawyers in this circle whether that is not the rule of law. They know it is. And it is common sense to a layman, that if it becomes material to prove the contents of a writing they must produce it, or they must show that they could not produce it—that it is lost or destroyed, or in the possession of their adversary, and if so that notice has been given him to produce it. That is the first rule of law. Where is the proof as to this memorandum?

Mr. SEDGWICK: Judge Smith swears he has it.

Mr. SHAFER: Have you given him any notice to produce it? Suppose his office is at Booneville. You must give him reasonable notice to produce the memorandum, and if he does not produce it, you can give parol evidence of its contents. As my associate suggests, that you must first prove it in his possession; second, you must prove that he has had due notice to produce it; third, that he has failed to produce it, and then you can show its contents; but until then, you cannot. That is the first and insuperable ob-

jection. The second is, that if Judge Smith in his deposition refers to this memorandum, or this statement by Collins, when upon the stand, as correct, that there is no proof here what that statement was. Now I agree with this rule of law, that if Judge Smith in his evidence refers to a paper which is then and there identified, it becomes a part of his deposition, or if he refers to a statement made by Collins which is then and there identified, it becomes a part of his deposition; but when the question is raised as to what that statement or that paper was, they must show what it was, even though it becomes a part of his deposition. Now they say he refers to the evidence of Collins, and says that the statement made by him and the contents of that memorandum were substantially correct. The dispute is as to what was that evidence. They say it was according to the deposition contained in the record. That we deny, and we say, secondly, that they have stipulated not to read the statement from the record. Now, how do you get around this? Is my friend in the dilemma that he feels as though he would like to read something in the record that he ought not to read under the stipulation? That we cannot help. What the statement of Collins was on this court-martial, he has no proof of. We shall prove what it was, and then it will become part of Judge Smith's deposition, if you please. They say they are going to prove it, and we ask how. They say they are going to prove what it was by the record. We say that is not evidence, for they have agreed that the record shall not be read. So there is an end of arguments. It is too plain for argument.

MR. SEDGWICK: A single word. I do not propose to enlarge at all the stipulation which we entered into, or to take anything under it which is not fairly in accordance with its letter and spirit. We were to read the evidence of Judge Smith. If this statement, which he swears to be accurate, by Collins, is really and fairly a part of his deposition, then we have a right to it; if not, we do not ask it. We are in no special dilemma about it, because we have Judge Smith's statement of what he went there for, containing substantially what Collins testified to with two or three exceptions, which he had forgotten or omitted to state. Now he refers to that statement of Collins, which was then recorded, which was a part of the history of that court martial, and a part of the testimony which is contained in this record. He refers to that and adopts it as his own. If that is so we are entitled to it. If that is not a fair statement of it we are not entitled to it. I do not ask

this Senate to grant us one favor—one particle beyond the fair meaning and import of our stipulation. I say that Judge Smith in that adopts Collins' statement as his own, and being his own, we have a right to read it.

The question on the offer of the counsel for the prosecution to read in evidence the testimony of Collins on the court martial of Haddock in relation to the contents of the memorandum prepared by Collins for Haddock, of the orders required by Richardson, was put to vote and was declared lost.

MR. SEDGWICK: The prosecution will here rest their case.

MR. SHAFER: The abrupt closing of the evidence for the prosecution, and the fact that many of our witnesses have not arrived, have induced the respondent and my associate, with my reluctant assent, to insist upon an opening of this case on my part, though it was our intention to have dispensed with an opening entirely. I have, under the circumstances, consented to state briefly the views of the respondent as to the facts which we expect to prove. I failed from the elaborate opening of my learned friend for the prosecution [MR. WATERMAN] to learn the precise grounds upon which the prosecution ask the impeachment or removal of Judge Smith. No one was more pleased than myself with the elaborate and learned and exhaustive opening of the learned counsel for the prosecution. He ransacked the law of impeachment from the earliest period down to the present day. He must have gone into the year books of England, as he certainly did come down to the last trial in this country. And yet, he fails to tell this Senate which is the important thing, for what cause you can remove this judge from his office. You must bear in mind that we did not contend (and I was surprised that the counsel labored upon that as he did) that the relation of an officer to the people is that of a contractor with a contractee; it is not the relation of an agreement between the people and the officer; and yet when the people, in their sovereign capacity, will confer upon A B or C D or upon George W. Smith the office of county judge of Oneida county, there must be some strong and overwhelming reason shown before he shall be deprived of that office. He cannot be deprived of it because, forsooth, he wears his hair too long or too short; because he dresses too well or too ill; because he professes this faith or that faith, or because he agrees with this politician or that politician. He cannot be removed

for any such cause as that, because under a system like ours, where the office is an elective one, and the people have twice deliberately, as they have in this case, conferred upon him judicial powers, there must be some overruling, some overwhelming necessity that shall deprive him of this office; and yet my learned friend (and I confess there was nothing more learned and could not be anything more learned than his opening) has failed utterly to show for what cause you shall remove him, except that his conduct must be such as to give strength and dignity and purity to the administration of justice, terms as general as can be well employed. What shall give strength to the administration of justice? What shall give dignity to it? That depends entirely upon the taste of the suitor or counsel. What shall give purity to the administration of justice? Precisely that course of conduct which this man has pursued for seven years for aught that appears in this case. And I ask you now, in all candor, you his judges who sit about this circle, where is there a word or a line of proof that Judge Smith has ever stepped out of his official duty, aye, to the extent of a hair's breadth? Where is the first case he has ever improperly decided? Where is the suitor who has ever complained? Where is the attorney of Oneida county who has had the hardihood to come here to undertake to impeach the official conduct, the judicial conduct of Judge Smith in any way? He has lived more than forty summers; his hair has become silvered in the discharge of his duty, not only as a lawyer but as a judge; he is known as well to the electors of Oneida county as any man in it; and you have not seen any of them, nor will you see here a single one of the residents of that county, or of the attorneys of that county, rising up in judgment against this man except these gentlemen who are paid to do a duty which they are well performing.

They have got a charge here, that he habitually neglected the discharge of his duty as the county judge of Oneida county; and yet when the counsel was called upon to state whether they intended to give proof upon that point, he says: "I will rely upon the proof that appears in the record; that in the months of March and February he was occasionally absent from the county." What a pretext! What a position for a prosecution to occupy! The ninth charge is, that he habitually neglected the discharge of his duty as the county judge of the county of Oneida, and not a single item of proof to prove a single line of that charge has been shown. Yet this charge has gone forth to the world, and was

published in these proceedings as early as the 14th day of February last; and that reveals, to some extent, the animus of this prosecution. Sir, when a man has been county judge of Oneida county, one of the wealthiest and most populous of the rural counties of this State for seven years; when he has discharged his duty satisfactorily, to charge him before the Executive, and the Executive to send that charge to the Senate, and the Senate to publish it to the world in its proceedings, that he has habitually neglected his duty, without an attempt to prove a word of it, we say that indicates the animus of that prosecution, and stamps it as groundless, except now and then he may not have suited this particular man or that particular man, or this particular clique or that particular clique, which may or may not exist in Oneida county. There has been no attempt to prove corruption! Where is the suitor who ever offered him a bribe? Where is the attorney who ever offered him a bribe? Where is the suitor, among the numerous suitors who for seven years have frequented his court, where is he! He is not even to be found in the lobby here, much less being put on the stand as an accuser. The bar of Utica—and we have the signatures of seventy of the hundred in the whole county who practice in that court—certify not only to his high moral character and his intelligence, but to his impartiality as a judge, and not a man is here against him. They not only thus certified, but they remonstrated in writing before his Excellency the Governor against these proceedings! That is some evidence—some little evidence, at all events, as we claim, in opposition to this charge, which they have entirely failed to prove. I hope my learned friend, the senior counsel [Mr. SEDGWICK], when he comes to sum up this case, as none but he can sum it up, finally, on behalf of the prosecution, will tell us deliberately why that charge was inserted among the rest and published to the world? I hope there will be some explanation of it, because I confess when I came to look over these charges that, more than any other, made an impression upon my mind; for if he had been habitually guilty of neglecting his duty as county judge, disregarding the interests of the suitors of his county, and disregarding the interest of those who visited his court, why of course he was unfit to occupy the office of county judge. I have made no sort of preparation for this opening, because I had intended to waive it, and I shall, therefore, refer to nothing except what is upon my mind at the moment; but I say we claim gener-

ally, that before this respondent can be removed from office, you must find that he has been guilty of a willful, corrupt, and intentional violation of official duty. Mark what I say, because it is the basis upon which this whole proceedings rests: Before he can be removed from the office of county judge by this Senate, he must be guilty of an intentional, willful, designed and corrupt official act or violation of law! We claim that you cannot remove him for a mere indiscretion; that you cannot remove him for a mere mistake; that you cannot remove him because of a mere error in judgment; but in other words, he must be rotten before he can be removed; or guilty of such conduct as evinces corruption in the discharge of his official duty. Any intentional, willful violation of law on his part; any official misconduct on his part, I agree, should be sufficient to remove him or any other man from office. I make this remark, and I want the Senate to understand the distinction we draw; for you observe they have got charges against him of official misconduct, and they have got charges against him of social misconduct. When I say social misconduct, I mean, it is alleged that he confederated, combined and arranged with Haddock and Richardson to give improper facilities to Richardson, in order to enable him to get recruits and to defraud various localities of their money. But I say, it has never been attempted before, as we shall show when we finally come to dispose of this case; and I undertake to say it will never be attempted again to impeach, or remove a man from office for acts not connected with his office, unless he has been guilty of a felony. This is the first time in the history of impeachments, from the earliest day down to the present (and I know what I say, because I have examined this question with no little care), that there has been an attempt in this country to remove a man from office because of misconduct, or offenses not connected with his office. In England, and that is where my friend is mistaken, a peer as well as a commoner could be impeached; a man guilty of a felony could be impeached, or a private citizen could be impeached by the commons, tried by the Parliament, sentenced and executed. But did you ever hear of such a thing in this country as the impeachment of a person for such a thing as neglecting his office, or for felony, and put on trial for punishment? Certainly not. Our Constitution expressly provides that in any impeachment case which may extend to removal from office, or disqualification to hold office, the party may be indicted and tried in addi-

tion thereto, in the ordinary course, so that my friend is entirely mistaken in supposing there is the least analogy between the law of England upon the subject of impeachment and the law of this country. I shall not stop to discuss the subject, which my friend debated somewhat at length, whether it is necessary, in order to be an impeachable offense, that it shall also be an indictable offense. I do not believe it is necessary, in order to impeach a man and remove him from office, that he should first have committed an indictable offense. I don't believe that to be the law, because I can conceive that a public officer could be guilty of misconduct in the discharge of the duties of his office, which would render him unfit to hold such office, and yet not be indictable. I concede that to be the law, but there is this distinction: when you undertake to remove a man from office because he has committed an offense not connected with his office, then it is important to ascertain what the offense has been; and I say it has been adjudged by the Legislature of this State, that where you undertake to remove a man from office for offenses not connected with his office, you must first convict him of a felony, and then he is removable upon the certificate of the court of that conviction. It is a provision of the Revised Statutes, already referred to by the counsel, that wherever a person holding an office is convicted of an infamous crime, or wherever he is convicted of official misconduct, upon a certificate to the Governor of that fact the office becomes vacant, and the Governor has a right to nominate and appoint a person to fill his place until the next election. The statute expressly provides that the office shall only become vacant under such circumstances, and the argument I draw from that is, that it is a declaration which is to govern in all cases where there is no declaration to the contrary, that no officer shall be removed for offenses committed not connected with his office, unless it amounts to a felony, and then only upon conviction. And why is that so? The Constitution provides, that when a man is to be tried for felony, he shall have the right, in the first place, to a presentment by a grand jury; in the second place, he shall have the right to challenge; and, in the third place, he shall be confronted with his witnesses; and it was not the intention of the Legislature that any tribunal, other than a trial by jury, should determine the question of the guilt or innocence of a party tried for felony. And it is a wise provision, this trial by jury. I need

not now stop to laud it; it has been dwelt upon by abler and more eloquent tongues than I possess; but I do undertake to say, and we shall insist, that before this Senate shall undertake to convict Judge Smith, or say he has been guilty of any offense, not connected with his office, he must be convicted according to the forms of law. It may be that he would not have selected you, and it may be he would have selected you, as his jurors; it may be that if a charge had been properly made against him, and he had been brought before a common law court, and this body were selected as his jurors, he would say amen, to every one of you, and it may be he would exercise his right of challenge, and challenge any member of you.

The meaning of the constitutional provision is, that he shall have the right to a trial by jury, where he can have the right of challenge, and the right of cross examination, and the right to be confronted with his witnesses. These are our views of the law: first, he must have done an act willfully and corruptly; second, that when it does not relate to his official misconduct, he must have been guilty of felony, and duly convicted before he can be removed from office. These propositions cover all the rules of law that we shall insist upon in this case. My friend upon the other side seems to think that you can examine this question and remove at pleasure; the expression he used was, "You can remove for pleasure or for cause." I deny that you can remove at pleasure; I deny that any such despotic power has been conferred on this Senate, as that you at your pleasure, from caprice or whim, may remove a public officer of this State. I concede you may remove for legal cause, but if they are driven to the extremity of insisting in this case that you can remove at pleasure, which means that you can remove from caprice or whim, I shall be very much surprised if this Senate can ratify, or dream of ratifying, any such dangerous doctrine. He says you have the power to expel the members of your own body. Who doubts it? But what would you think if, in the exercise of such a power, any Senator should rise up in his place and move to expel a brother Senator without assigning any reason therefor. Of course you would be satisfied to expel if cause were shown, but if the Senators sought to be expelled without cause, but simply at the pleasure or whim of the remainder of the Senators, what do you say at the action of such a body? You would never respect yourselves after such an act, and yet they are driven to that precise ground in this case.

Now, as to these charges and our proof, I shall not read th m in detail. The first charge is that George W. Smith, the respondent, as county judge, listened to applications on the part of those who claimed they were exempt from service in the militia, and that he took fees therefor, in violation of law. That is the charge. The statute provides that county judges are not entitled to take fees, except in cases where justices of the peace and commissioners may. I don't know as we shall take that position in this case. I do not think it is necessary for us to take the position that Judge Smith was entitled to take fees as commissioners and jurors are. Nor shall we take the position which was successfully taken in a celebrated case, that inasmuch as these duties were imposed upon him after his election to office, he had a right to charge therefor. I don't know as we shall take that position, though there is good authority for it, but we shall show to this Senate, as the truth is that where parties (and I understand they did not exceed twenty-five or thirty in all) came to Judge Smith and made application to be exempt, the judge swore them according to law, and examined them, and if he found, after examination, that they were entitled to exemption, he sat down and drew up an affidavit showing that they were entitled to exemption, for the purpose of being preserved as a record. Now mark how this thing was done. A. comes before him and says: "I am exempt." For what cause are you exempt? Then he swears him and examines him orally, and if it turns out that there is no ground for exemption, of course he refuses the claim, the man goes off and that is the end of it. But if, after examining him orally and deliberating upon the case, he makes up his mind there is good ground to exempt him, then an affidavit must be made. For what purpose? The writing must be made and that which he has sworn to must be preserved as a record, and he simply sits down and makes a record of what the man has sworn to, and what he acted upon, for the purpose of being filed with another officer. That is what Judge Smith did—it is a mere clerical duty, and a mere clerical office. If the affidavit was a short one, seventy-five cents was charged; if it was a long one, a dollar was charged, and if it was a longer one, $1.25, and I think that was the limit—just what you would pay to a clerk for drawing up an affidavit of what had transpired before an officer; and for that, forsooth, Judge Smith, who has been a county judge for seven years, to the satisfaction of all Oneida county—for that, he is to be removed from office and be disgraced for life. That

my friend thinks you should do. That my friend thinks is necessary, in order to give strength and dignity and purity to the administration of justice. Where are these men for whom he drew these affidavits? where are these men whom he accommodated by acting as a scrivener? Are they here at the doors of this Senate chamber asking you to convict this man, and remove him from office? No, they are his best and bosom friends, for all that appears, and yet they were strangers to him. They came there to make application, and it was a convenience to them. Should he send them out of his office? Send them where? To my friend, Mr. Waterman's office? Should he send them to him to draw up affidavits? Yet this is claimed to be an impeachable offense, and claimed to be improper conduct; and this man must be disgraced, his children and his family disgraced, because he took, in the aggregate, probably $12.50 for the affidavits thus drawn. It is too contemptible to think of in this high tribunal, if there is anything that can be contemptible. Then it is said his partner, Utley, did the same thing. Very well; look how the thing transpired. When he came to a decision of that kind, in regard to the man who was thus exempt, and it was not convenient for him to draw the affidavit, then Utley draws it, charges seventy-five cents, and it goes into the general account.

The point I wish to make to this Senate, is—and that you have got to find before you can remove this man—do you believe that in his heart, then and there, he thought he was violating the law, and was corrupt? If you do, remove him. If you think it was done indifferently, if you believe it was done honestly, if you believe he thought he was not doing an improper act, you have no right to remove him and you cannot remove him. That is the distinction. Before you can remove a man from office, you must find that the act which he did was rotten, that it was corrupt, that he knew he had no right to do it, and that he did it corruptly, intending to violate the law.

Was that the position of Judge Smith in taking $12.50 or $25, (I do not know the precise amount, but it was inconsiderable as we shall show) for drawing these affidavits. If he had charged $25 for an affidavit, or $5 or $10, it might look as though money had influenced his judgment, but here is the wages a scrivener would have charged, just what a clerk would have charged for doing an act which he was bound to do, and which was done simply for the purpose of preserving a record of the decisions he

had made. The section referred to is this [Session Laws 1862, p. 942.] "Any person so drafted, may, within five days after receiving notice of the same, present to the county judge of such county his certificate of exemption, or other proof of his non-liability to military duty, which shall be duly verified, and if such county judge shall decide that such person is exempt or not liable, he shall be discharged and another person shall be drafted in his stead, in accordance with the provisions of this act." It was not necessary it should be done, but I believe there were some regulations requiring that it should be kept in the form of affidavits. That is all I shall say upon that subject, but I want to say here, though I shall not dwell upon it, that under your rules, if you find for the first and second charge, to wit: that he took fees, and that Utley prepared these affidavits, yet that is no true ground of removal, you have wisely provided in one of your rules that the first question shall be: Is the charge proven? Second, if proven, is it ground of removal?

If they had charged him with shooting a hen, and if it was proved to be true it would be no ground of removal. We say, here, that it might be proved that he drew these affidavits and took this pay, and that Utley prepared affidavits, and yet it would be no ground for removal. You will find upon looking at the Revised Statutes that it is essential in order to constitute an offense, that the partner shall practice before him.

Now there is no proof, nor will there be any such proof; on the contrary, we shall expressly show that he did not practice before him, and that these decisions were made before these affidavits were prepared.

But, Mr. President and gentlemen of the Senate, it seems as though our friends understood this precisely as we understand it. I have stated what the law is, and common sense tells you what it is; and I see before me a Senator who was one of the managers in the Mather trial; and the gentleman who was counsel for the managers at that trial. Hon. John K. Porter, now one of the judges of the Court of Appeals, there expressly stated the law to be as I have stated it, as did Mr. Hastings—that they must show willful, intentional, and corrupt conduct on the part of the judge, and it must be so charged. If you will look at the first and the second charge you will see they don't pretend to say that what he did was corrupt or willful. They don't pretend any such thing, but they leave it on the face of the paper to be inferred that it was

done indifferently and without design to violate the law, and without intentional corruption. I shall show to you this charge cannot be found to be true, and in the absence of any charge of willful and intentional corruption, you cannot find the willful and corrupt intent: and not finding that, he cannot be found guilty upon these two charges in any way or form.

Now, we come to the third charge: and my friend, Mr. Waterman, when he opened this case, and when he read this charge, I thought he emphasized this quite as much, if not more than any of the others. This is the charge which speaks of the appointment of the respondent by the commissioners of excise as attorney to the board. The Senate will remember they claimed upon their side that this was an office. No greater fallacy ever existed in the mind of any lawyer, and I do not think the distinguished gentleman [Mr. SEDGWICK] who will finally sum up this case on the part of the prosecution, will claim the appointment of attorney by the commissioners of excise to discharge the duties they may assign to him, confers upon that attorney an office. An office is a public employment, as we shall show you. It is an employment by virtue of some public authority; it has been expressly decided in the 20th of Johnson, that the appointment of an attorney—an attorney in a court of record—is not a public officer within the meaning of that term. We say, when A employs B to do his business, he employs him as an agent, or attorney, and expects to pay him; there is an obligation to pay him, and the relation of attorney or agent is simply created; and the theory that when I am employed by his Excellency the Lieutenant Governor to transact his business for him, that I have thereby an office conferred upon me, within the meaning of that term, is the veriest absurdity that ever entered a legal mind. If every time I am employed by my clients to transact business for them I am then a public officer, then I would be one of the most public officers, as many other lawyers would be, in the country. It is the merest fallacy, when I am appointed an attorney of the court I become an officer of the court, and subject to the direction of the court; I may be removed by the court, I may be committed for contempt by the court, and I am an officer of the court. But when my client comes to me to transact business for him, I become the agent of my client, and he is my principal. He has the right to discharge me at any time, and I have the right to agree upon the terms of compensation, but nothing like an office is created. But they seem to think when he

got that appointment he became a public officer, for they charge him with having obtained a public office—"the same being a valuable office and appointment." It is conceded and it must be conceded that it was simply the retaining of the respondent as an attorney. If they had a right to do it, he had a right to relinquish his retainer. Was it any more than a retainer? They retained him for doing what? Such business as comes within the sphere of the commissioners of excise. Had they a right to retain him, had they a right to retain any person? It has been established by the courts that they have a right to retain a person they may appoint an attorney for the county, and the county must be held to pay for the retainer; and it has been so held against this county of Albany to the tune of $10,000. They have the right to employ an attorney, and was there anything in the position of Judge Smith which disqualified him for acting as his attorney. He was a county judge of the county of Oneida; he was also a lawyer, and entitled to practice in any of the courts of this State; and is there anything in that position of county judge that disqualified him from acting as attorney for the commissioners of excise? If it was improper for him to do so, then there may be some foundation for the argument on the other side. Is there any prohibition in the Constitution; is there any prohibition in any statute of this State against county judges acting as attorneys? I see around this circle, to my certain knowledge, at least four who have been county judges, and I would like to know if when they accepted the office of county judge, they thereby became disqualified from acting as attorneys not only in courts of record, but even in a justice's court. Where is the statute, or where is the constitutional prohibition, or where is the usage which deprives the judge of that part of his profits from practising in all the courts of this State with a salary of $1,600 only, upon which to subsist in these times of an inflated currency; will somebody point out the statute or constitutional provision? My learned friend [Mr. WATERMAN] who has spent months and months of research in this case, has entirely failed to discover any such prohibition, and there is none.

They have the right then to retain an attorney, and there is nothing in the respondent's character of judge which disqualified him from being such attorney. He had a right to practice in a justice's court, as has been properly suggested, and as I shall show you more fully. If they had a right to employ an attorney,

and he was not disqualified from acting as such attorney, and if he secured business which they had a right to offer, the question is whether he had a right to relinquish that business. They call it the "selling of an office." The question is whether a man who has secured business either through his influence or that of others, has a right to surrender it for a valuable consideration. I am an attorney for a bank. Have I a right for a consideration to relinquish my retainer from that bank to my learned friend, and to give him my retainer, and to take $5,000 for it? Whoever doubted it?—or whoever disputed it? We all have clients in this State, and who doubts that I have a right to surrender my claim to do business for the Messrs. Schuyler for instance, upon being paid a proper consideration therefor, or without a consideration. You find a physician in the city of Albany, the most eminent if you please, and he proposes to sell out to a brother physician, not only his entire practice but the good will of his business, and to remove from the city of Albany. Has not he a right to do that? And what is the difference between a physician and a lawyer? There was a time when both were licensed, and they both secure business, through what? Through their capacity, their ability, their influence and their success, and as it becomes valuable, if it can be controlled by them in behalf of another why should not that other pay for it, and the party who can thus control it be at liberty to receive the money for it. Here is the point, and here I concede is the question for the Senate: if Judge Smith had said to Lewis, Reynolds and Weaver, "Now I will appoint you commissioners of excise upon the condition that you make me the attorney, but if you won't I won't appoint you," then there would have been trouble and difficulty. If this was the allegation, and it was true, then there might be a serious question in this case; but they having been appointed without any understanding that he was to be the attorney, they had a right to make him or me, or you the attorney, and it is nobody's business. There is some intimation, I see, by looking over the evidence of Judge Smith, that there was talk that Weaver was to be re-appointed. We shall put Mr. Weaver on the stand and show that when this $500 was paid Mr. Barrows spoke upon the subject of the re-appointment of Weaver. It was remarked that he had nothing to do with it, that Weaver's re-appointment had been settled long before. There was an inconsistency in the opening on the part of my learned friend. He said that Weaver reluctantly

signed this appointment of Judge Smith, and yet it seemed that this gentleman who was so very reluctant was the very gentleman who was to be re-appointed by Judge Smith. The whole truth is, as we shall show, that these commissioners of excise were appointed without any knowledge, suspicion or design on their part, or on the part of Judge Smith, that he should be made the attorney. There was no thought of it in the mind of any man, and when Judge Smith was applied to by French to use his influence with these commissioners to have him appointed, he applied to them to have James G. French appointed as attorney to the commissioners of excise, but they declined to appoint French. He tried to influence them, and tried to "use his official influence," as they say, to effect that purpose; the commissioners declined to appoint French, but they said, "we will give it to you, and make you the attorney." Here I will say in passing (and I want the Senators who hear this declaration to look at home at the county judges where they reside), I make the declaration that the county judges in this State act more or less as attorneys for the commissioners of excise, and we will prove it if we are allowed to. They made the offer, and subsequently, upon reflection, he drew up this appointment a year afterward.

Barrows had been doing the business, and he is made aware that they have changed the attorney, and that would deprive him of his appointment; and it being a source of livelihood to him, he felt anxious about it. What did he do? Just what I would do under like circumstances, if I found that a client of mine was going to change his attorney, and to deprive me of my employment; I would go to him and try to get it away from the other attorney, I would try to persuade my client first, and then I would try to get the retainer from the other attorney.

That is just what Barrows did in this case. He goes to Smith and says: "I understand you have been appointed as attorney to the commissioners of excise, and that I am about to be deprived of the moneys I have been earning as their attorney." I believe he appealed to his sympathy on account of his family. This business was worth from $1,000 to $1,500, and this judge had a right to keep it, but Barrows offered him $500, certainly much less than he could make out of it, and finally it resulted in his taking $500 and giving up the appointment, and that was the end of it. An attorneyship offered to him by the commissioners of excise with-

out his solicitation; an appointment offered without even a hint on his part; an appointment not accepted until a year after it was offered, and relinquished for one-half what it was worth, and yet it is claimed that for this act which has no relation to his office whatever, Judge Smith is to be impeached and removed. Who has complained about it? Who is the complainant? Where is Barrows? He is not among the complainants; he is not dissatisfied; his voice has not been heard against this man, nor will it be; it will be heard in his behalf very probably, if at all. And yet by this act it is claimed that Judge Smith failed to give that strength and dignity and purity to the administration of justice which is essential to the welfare of the people of Oneida county.

Mr. H. C. MURPHY: Do I understand that Judge Smith held this appointment for a year without acting under it?

Mr. SHAFER: No, sir; it was offered to him a year before he accepted it.

Mr. H. C. MURPHY: How long was it after the appointment of these commissioners of excise that this appointment was conferred upon Judge Smith?

Mr. SHAFER: Five years after; they were appointed one, two and three years before, and one of them had been under his appointment for five years; that is the truth in reference to this third charge about which we heard so much, which has been paraded in the public press; for mark, gentlemen, my client is too poor to control the press of Utica as some have controlled it to his prejudice. It was this charge which sent through the lower house a bill to deprive him of his rights, with indecent haste, and which was properly arrested by this dignified body. It was this charge which was sought to be pressed through this body, and thus prejudged this case against this respondent. This was the main thing—he had *sold an office!* I am curious to hear my learned friend upon the other side [Mr. SEDGWICK] demonstrate that this was an office, in the presence of authorities which we shall show here, where the precise question was raised, whether it was an office or not. I concede it is an offense to sell a public office. But what kind of an offense? It is simply a misdemeanor to sell an office, and I have shown, or shall show, that it is no ground of removal from a public office. Again, the distinguished counsel in his opening said that the duties of a county judge were inconsistent with that of an attorney to the commissioners; that criminal cases which were brought in the sessions may be tried by a county

judge. That is true; but who ever heard of the commissioners of excise assuming to conduct a criminal prosecution in cases arising under the excise law? As I understand it, they have, as district attorney in Oneida county, a distinguished and eminent young man, Mr. Jenkins, who is entirely competent to take charge of those prosecutions, and he does; and who ever heard of the commissioners of excise employing an attorney at the public expense to perform those duties which the district attorney is bound to do under his salary? What are his duties? Of course it would be to bring actions for recovery of penal damages for the violation of the excise laws; it would be actions of that character. But suppose he brings an action of that character before a justice of the peace (which is not supposable, for most of the penalties are $50), the experience of every practicing attorney has been that, in bringing excise cases in a justice's court, there are always certain influences surrounding those courts which enable the defendant to get a verdict, although you may prove a violation of the excise law a dozen times. But when you come into a court of record, the judge does not allow any such peculiar influences to prevail. So that Judge Smith is not as good a lawyer as I know him to be, and not as good a practitioner as I know him to be, if he had brought actions of that sort in a court of a justice of the peace. A county court is a court of record, but it has no original civil jurisdiction such as would enable attorneys to commence actions to recover those penalties in those courts; that has been well settled by the Court of Appeals. If an action is commenced for the board, and the defendant is dissatisfied with the verdict, he can bring an appeal to the county court, but then if he is the judge, he is disqualified from hearing it, and then the action goes to the Supreme Court. "Well," says the counsel, in his opening, "he is a member of the court which can annul a license." What of that? Is it to be presumed because a man is attorney for the commissioners of excise, that he would improperly annul a license, or refuse to annul a license where it should be annulled. You look in vain, may it please Senators, for any substantial reason why he should not be attorney to the board of excise. There is not any objection that can be imagined except, (to make the exception just as clear, and just as definite as it possibly can be made) if he had appointed these commissioners with the understanding that he was to be made attorney, and he only, that would have been an act of corruption, and I should not stand here to defend it. Although

it is done, and we all know it is done, again and again, it is improper, illegal, dishonest, and corrupt for public officers to obtain public positions for the mere purpose of filling their private purses. We all understand that, and it would have been an act of official corruption, if he had appointed these commissioners with the understanding that he, and he alone, should be made the attorney, and everybody else excluded. But that is not the case. They are appointed without any such intimation, or any such suggestion; they are appointed four or five years before, and he endeavors to have French appointed in the place of Barrows; they decline that, but offer it to him, and he declines it for a whole year, and at the end of the year he takes it, and upon Barrows being informed of it, he negotiates for the purpose of getting the retainer; the money is paid for it, and that is the end of it. Samuel J. Barrows has made no complaint whatever. He is not at the bar of this Senate demanding the conviction of this respondent; he finds that he made a good bargain. He finds that by the relinquishment by this respondent of that retainer which he had legally secured, he has, for the consideration of $500, secured business which we allege to be of the value of over $1,000, but the actual value of which he knows better than we. And how absurd the idea, as is properly suggested, that he could even control this appointment for one moment. I would like to have the distinguished counsel answer the proposition, whether the commissioners of excise could not have deprived him of this appointment the next hour after it was given. Is there anything that deprives you of the power to discharge your attorney whom you have retained, to-day? Is there anything that deprives the commissioners of excise of the power to discharge Barrows to-morrow? It amounts simply to this: "you have got this appointment in your possession, as attorney, or counsel, or as a man, or as a judge, giving you what you had a right to take. But if you fail to exercise the right which you thus obtained, I will give you $500." And yet the very next moment they might have deprived not only Judge Smith, but Barrows of this very employment.

MR. FOLGER: Did Judge Smith ever exercise any functions as attorney.

MR. SHAFER: No, sir, not at all. Barrows was the attorney, and when he ascertained this he felt his bread and butter were depending upon this office. That is the whole of this $500 that

was paid by Barrows. If this Senate will hold that he, who has secured business either as attorney, or physician, or otherwise, has not the right to relinquish it for a fair consideration; or if the Senate will hold, that he who has secured business of any name or character whatever, has thereby secured an *office*, then of course the inquiry is, what is the offense that he committed? He committed a misdemeanor, and I have shown that for that you can not remove him from his office. But I put it upon the broad ground that he had the right to be employed, and it was proper to employ him, and there was nothing inconsistent with his duty as attorney, and his official duties as a judge. He had a right to relinquish the employment, and had a right to take compensation for it, as every one has who has obtained an advantage by reason of his personal ability or influence, or his official influence. The next charge is in reference to French; a proposition which was substantially the same thing. All about that is that which appears in the judges testimony. He tried and exercised his influence in favor of French; his idea was that French would be appointed as attorney for the board, and they could do the business and divide the profits. But the commissioners declined to appoint, and that is all there is of this fourth charge. It was never communicated in any way or form. It is true he did, as I say he had a right to do, try to have French appointed, contemplating a partnership, but I would like to know what that has got to do with this case. I would like to know what is wrong about it. If there is any law preventing his acting as attorney for the commissioners of excise and as county judge, or Supreme Court judge, then it is an entirely different question, but I think the ingenuity of counsel will fail to discover any such thing. Then what is there about this Norton affair? The next charge is that Norton was improperly bailed. What is the truth about that? I would state briefly what we expect to prove. Norton was confined in jail on charge of larceny. A young man by the name of McIntosh ascertained that Norton desired to be bailed, and was willing to give his local bounty to anybody who would go his bail. McIntosh and Utley contemplated partnership. Judge Smith knew nothing about it then, nor when he was examined before this court-martial. McIntosh applies to Utley for the purpose of assisting him to procure this bail. What do they do? In the first place, they go to Judge Bacon and state to him that they desire to have Norton bailed with the view

of his going into the army: they go the district attorney, and give him information of that fact; they go to the complainant who was a room-mate of Norton's, and whose money it was alleged Norton had stolen, and they get his consent that there shall be no further prosecution, and therefore Judge Bacon signs an order that he be brought out for the purpose of being bailed.

All this was without the knowledge of Judge Smith; he knew no more about it than a child unborn. Of course, Utley is not going his bail until he ascertains that he can get the local bounty. Instead of taking him before Judge Bacon, they took him to the provost marshal's, and he refused to muster him in unless a certain portion of the bounty could be paid to him, and Utley, of course, would not go bail unless he had indemnity from the local bounty.

Thereupon he applies to Judge Smith (and that is the first that Judge Smith knows anything about it), for an order from Haddock that he may be mustered in without the local bounty being paid to him; *provided*, that Norton is delivered at headquarters at Elmira in person, he can be mustered in by Col. Poole at Utica and credited to that locality. Then they go for the purpose of bailing him out; they cannot go before Judge Bacon, for he is out of town, and they bring him before Judge Smith (the judge is mistaken in his evidence as Utley shows) on Judge Bacon's order; and after he is bailed on Judge Bacon's order, as we shall show, the deputy sheriff says: "What have I to show that he was bailed by you, Judge Smith?" Then Judge Smith sits down and writes the order which appears in the deposition. I do not care whether he was brought out on Judge Bacon's order or Judge Smith's order, we shall prove that what Judge Smith did was not only done in Utica, but in Oneida county, and done to the knowledge of every Senator here throughout the State. Everybody knows that everywhere throughout the State the jails were emptied for the purpose of filling up the army. I do not design to state in detail all the facts and circumstances which we expect to prove; but as the respondent thinks this important, I shall state it with more detail.

All the respondent did in this case was simply to take the acknowledgment; in other words, to carry out what had been agreed and assented to by the public authorities in Utica. He did not initiate it. He was entirely ignorant of the entire proceedings until Utley told him all about it, and then he did what he did. And we shall show you that in Utica it was the practice to bail,

not only burglars and counterfeiters, but those guilty of grand larceny and those guilty of murder. They bailed them there, and let them go into the army; and when the district attorney who was in Utica undertook to forfeit the recognizance of a man indicted for murder in the first degree, a judge of the Supreme Court, knowing that the man was in the army, refused to allow him to estreat the bond. We find no fault with the judge and the district attorney. The district attorney was full of fight. Mr. Jenkins was proceeding against this thing, but the judges on the bench, as well as the district attorney, elsewhere, and the community at large, said: let these men who have violated the law go into the army; it is better to fill our army with them than the jails and State prisons. That was the sentiment, although I concede it was found afterwards that these desperate men who were guilty of violating the law, made very poor soldiers. When I had the honor of being district attorney for this county, in 1863, a cell of the jail scarcely received a felon, before he was out as a substitute for some one, or went off to the credit of the county of Albany. Judge Smith did no more than any other county judge did, and even than the judges of the Supreme Court who held such men to bail; nor did he do any more than Judge Bacon did, who refused to allow this bond to be estreated against a murderer. We shall show you that before this man was bailed, nine or ten fellows had been bailed and sent into the army, upon the express understanding that they should go into the army—and bailed too in the court of Oyer and Terminer by a judge of the Supreme Court; and, yet, they single out this man—this respondent, who in this single instance followed on what had been directed by a judge of the Supreme Court—to hold him as having committed an impeachable offense. He never got a dollar of the money, and there is no pretense that he did. Utley was to go into partnership with McIntosh, and they divided the money. We shall prove this by the evidence they have introduced. Now, I would like to know what there is of this charge—what did Utley do? He bailed this man. He got the $600, and expended some fifty or sixty dollars to deliver him personally at Elmira. He hired a man specially to take him there, and he was delivered in person at Elmira, and went into the army, yet, for that they say you shall remove this man. It is possible in these days of excitement, and not very strict adherence to law, the interest of the county of Oneida, the strength, the dignity, the

purity of the administration of justice, demands that because of Norton's being bailed and going into the army, and for aught we know, shedding his blood in defense of the Union—that this man shall be removed from office. I know not what may be the judgment of the Senate, but it does seem to me if we show what we have stated, even upon the papers as they stand here—because Judge Smith swears in his deposition, that he did just what he understood was the practice—you cannot do otherwise than exonerate this man. You will mark too, that the Judge Advocate, Roscoe Conkling, who was on the court martial, endeavored to shut out, and indeed partially succeeded, proof of what was the practice in this respect and endeavored to conceal the name of Judge Bacon as though he had committed an offense, when he only did what every other judge in the State had done. I will undertake to say, unless in the rural districts where there are no large villages, there is not a judge in the State who has not bailed men for the very same purpose, although Roscoe Conkling succeeded, to a great extent, in shutting out this explanation; yet it is in. It seems that this respondent did precisely what he understood the practice to be in the county of Oneida, in the court of oyer and terminer, by the judges of the Supreme Court, and well may he follow their example. Is it an impeachable offense for the judge of a county court to do what the judges of Supreme Court has done? Gentlemen, what you must do in deciding upon that charge, is to look into his heart and say whether in it he thought he was doing wrong when he did that thing, and when he was doing what other judges have done, and what was the common practice. You cannot impeach and remove a man for doing what has been done by those who are superior to him in authority, and occupy a higher position, not only in the law, but supposed to be superior so far as the legal ability of the incumbent is concerned; although I do not concede there is any Supreme Court judge in the county of Oneida who is superior in ability to the respondent in this case. The question is as to the motive. If he had taken part of this money; if he had divided this money with Utley and McIntosh, we should not be here; but he is as guiltless and as stainless as the purest man in the country. No dollar ever went into his pocket from that transaction or any other, although they charge him with the monstrous fraud of swindling the citizens of Oneida county out of the sum of two or three hundred thousand dollars—never a dollar of it went into his pocket, and there is no pretense that it did. Of all the

acts this judge, whose acts are asserted to be so monstrous, has done, there is no pretense that he ever received a dollar except openly and above board in relinquishing that appointment in the case of Barrows. He is as poor as man can be so far as this worlds good are concerned, and yet, he is upon trial, upon the theory that he has been a confederate and associate with thieves and bounty brokers who have made millions. That is not the way that a scoundrel does business. For, if a man is pure and stainless, and knows no corruption, and practices none, but is of good heart, as Judge Smith, he is true to his friends, and we shall endeavor to show that is all there is of this charge. He may do good natured things which may be subject to criticism, so far as propriety is concerned, but so far as corruption and official misconduct is concerned, there has been no such thing produced against him.

Mr. FOLGER: Does the counsel intend to comment at all on that part of this charge in relation to Norton, that the bail-bond was secreted?

Mr. SHAFER: Yes, sir. The law is, and I appeal to any district attorney who has ever practiced as such, or any county judge, that the county judge within a given period of time, shall file whatever bonds he may take in the county clerk's office. Now, in this case it was understood that this man was not to appear, but to go into the army; everybody understood that. I believe the complainant in writing had acknowledged satisfaction, and that this bond under these circumstances was taken and left by the judge in his office, where it is to this day. The district attorney will come upon the stand and will swear that he never demanded it in any shape or form; that there was no prosecution; that he never intended to indict in any way or form, and no indictment was ever presented, nor was there an attempt to prosecute this case in any way or form. The theory, or rather the insinuation, and I think my learned friend did himself injustice when he said that this bond had been destroyed or secreted and is entirely unworthy of this prosecution. The bond has not been destroyed nor has it been secreted. It is there, and the district attorney has never demanded it; never sought to prosecute it; he has never called the name of Chas. E. Norton as a criminal or otherwise. But here the judge takes a bond, which he should file according to the statute in fourteen days. It lies in his office to-day and anybody can take it or

anybody can demand it who has an official right to it, and yet, they say, he shall be removed. Representations were made to the judge that this man would go into the army; and we shall show further, by the district attorney, that when he has desired bonds that were taken by the judge at chambers, he would go to the judge and ask for them. There is not a judge in the State—I mean more particularly in the cities, where the application to bail are frequent—who takes the bond and goes to the clerk's office and files it; he always sends it to the district attorney, or keeps it in his office until called for. Everybody knows that is the universal practice, and everybody knows, who is at all familiar with it, that that is precisely what he did, and he did precisely in this case what he did before. I do not know how many bonds he has got in his office, but I am told there are any number of them, and I have no doubt you will find it so in any judge's office. This theory that the bond was destroyed or secreted, or that there was a design to exculpate Utley—I appeal to the Senators about this circle to know what good would it have been to destroy that bond? Cannot you prove its contents? Suppose the district attorney had desired to bring an action upon that bond. If it had been lost or destroyed could not he have proved the contents? Did not Utley know of it? Did not Judge Smith know that it was an open public transaction—that it was a transaction sanctioned by the judge of the Supreme Court—that everybody knew all about it? Why secresy? Everybody too, knows, who is at all familiar with the practice of criminal cases on the part of prosecutions, that they never call for the bond or undertake to forfeit it until the party is indicted. What would have been the theory for calling for Norton in this case? The district attorney knew he was in the army; the complainant did not appear; he was not indicted; there was no occasion for forfeiting the bond, and if Norton had been indicted and he failed to appear, then, of course, the bond would have been required. I think nobody will charge Mr. Jenkins, of Oneida county, with anything like *laches*. Nobody will charge him with any intent of that kind. As district attorney his object always was in all cases to prevent such men going into the army, and to punish them as he understood the law to be, and it is very probable he was wise about it. Now the next charge to me is a very novel one. This charge, as I remarked before, is in reference to acts alleged to have been done by the county judge, not relating to his office. In other words, acts

alleged to have been done for the purpose of enabling Richardson to improperly recruit, and to fraudulently obtain large sums of money from the citizens of Oneida county and others, and according to our view and theory of this charge, instead of presenting anything like an accusation against Judge Smith aside from the question of law, in view of the evidence as it appears already in this case, and as we shall establish it, the whole thing was entirely creditable to Judge Smith. Now let us see. It is alleged that he confederated, arranged and combined with Haddock and Richardson to obtain improper facilities for Richardson to recruit, to the end that Richardson might obtain large and princely sums of money. What is the proof as they present it? The proof is that he obtained from Haddock for Richardson just three orders. Now mark; he obtained from Haddock for Richardson, during the period from the tenth day of January until the sixteenth day of March, 1865, those three orders. What were they? One that Collins might make out enlistment papers at the Provost Marshal's office, which is found fault with. What was the result of that? What is there improper about it? What fraud has been practiced in consequence of it? Is there any proof or any complaint in reference to it? The second was that they could retain five-eighths of the bounty, and that it could be assigned by the recruit, and three-eighths sent to Elmira. That is the second order. Before that three-eighths was allowed to be taken out by the recruit, five-eighths was retained and sent forward to the office at Elmira. The third order was that Provost Marshal Crandall at Utica might muster in men for districts outside of the Twenty-first Congressional district. These are the three orders that this respondent obtained for Richardson, out of which it is charged that the most monstrous frauds that were ever perpetrated were perpetrated successfully by Richardson, and yet you have not got a word of proof, not a line of proof, not a scintilla of proof in this case that a single fraud was ever contemplated or perpetrated, or that a single man was improperly enlisted, or a single dollar improperly obtained; and they ask you to suck out from your fingers ends how frauds may have been perpetrated by the obtaining of these three orders—the order that Collins make out enlistment papers; the order that the recruit might take out five-eighths of his money, and the order that Crandall might have power to enlist men out of that district (and he is, as I am informed, to a certain extent at the bottom of this prosecution against this

respondent), and that he should retain three-eighths of the bounty, and that five-eighths go on to Elmira. Who is this respondent? He is a lawyer as well as a judge. What is the duty of the lawyer? What is the province of a lawyer? Is it improper for me, if I have intimate relations with the judge to appear before that judge and argue a cause? Why, gentlemen, in practical life, and I state just what you all know is the truth, that he who has a friend at court is the more often employed than he who stands indifferent with the judge. I could cite instances to you, but you all know that lawyers receive retainer upon retainer upon the theory that they have influence with the judge, either personally or otherwise; have relations with him that enables the counsel to occupy a favorable position with the judge. The theory is, and it is the head and front of this theory, that Judge Smith knowing Haddock and they being old friends, having known him since 1848, he then having been a brother editor at Watertown, and having taken dinner with him at Cassidy's restaurant, Richardson thought that he might be of some influence to him in procuring orders, and he accepts a retainer as attorney and counsel to do what? To get any ordinary order that anybody could obtain not in violation of the duty of Haddock, and he goes there to obtain those three orders. Now mark, gentlemen: you must shut out of your minds in this case everything not contained in those depositions. What they offer to prove as contained in this is not before you in any way or form. He goes there on the 9th and 10th of January, and obtains three orders. What is the next thing he does?—because I am going step by step through these different transactions, briefly, for the purpose of showing that even upon their own evidence there is nothing that can be regarded as an accusation against Judge Smith. When he next saw him you do not know, although the newspapers have talked about it and although the charges were printed improperly in the Senate documents. You do not know anything about what the transactions were between Richardson and Haddock from first to last. They are out of this case. They are as though they never existed; and if frauds were practiced, if bribery existed between Richardson and Haddock, you do not know it. It is not here. There is no proof of it. There is no proof even in this case that Haddock and Richardson ever knew each other. Instead of proving the combination and confederation, there is no proof that they ever knew each other prior to the third day of March. There is no proof that they

were ever acquainted with each other at all prior to the first day of January. This man on the third day of March goes for what? He goes for McIntosh to get money due to McIntosh. Judge Smith goes there, as we shall show, and learned for the first time that there had been improper documents and communications between Haddock and Richardson. On the third day of March, 1865, Judge Smith went to Elmira on business for McIntosh, and learns for the first time that Haddock regarded Richardson as having him somewhat in his power. Here is what I do not want to escape the minds of Senators, because it is the key which unlocks the whole case, and shows clearly what the animus was that actuated Judge Smith in every step he took; therefore, instead of undertaking to bribe Haddock, he was endeavoring to prevent this notorious scoundrel Richardson from crushing him and compelling him to give such order as he desired, to the end that frauds might be perpetrated. Haddock then tells Judge Smith that Richardson, he thought, had him in his power; that there were telegrams and documents which he had that he would rather he did not have. They were friends, Smith and Haddock, and they were old friends; and when Judge Smith is your friend, he is your friend to the death. He learned to some extent how this man Haddock was in the meshes of Richardson, what information had been communicated to him, and how it had been at one time attempted on the part of Haddock and Richardson to defraud the government. What did Judge Smith do? As we shall show you, he sat right down and wrote to Haddock: Sir—It is your duty to get rid of this scoundrel Richardson; and it is your duty, whatever the consequences are, to inform the government of his rascalities. What doss he do on the 4th of March? He writes this telegram, Judge Smith does, with his own hand, and Haddock sends it to General Fry, and we shall see whether Judge Smith was trying to favor Richardson, or bribe Haddock to give Richardson further facilities; whether he was a confederate when they were informing against the principal scoundrel of the three, as alleged upon the other side:

"ELMIRA, *March* 4, 1865.

"Brig. Gen. FRY, *Prov. Marshal General, Washington, D. C.:*

"I am convinced that an extensive system of fraudulent enlistments is being carried on in the Twenty-first congressional district I think an investigation will disclose that the board of enlistment

have given facilities for these operations, which have been mostly conducted by one A. Richardson. Certain supervisors are also implicated. I wish Col. Baker to come here, if only for a day. Some arrests should be made immediately. I have proof of a stupendous scheme of bounty jumping, having its centre at Utica.

JNO. A. HADDOCK, *Major*, *&c. &c.*"

Also this telegram:

"ELMIRA, *March* 6, 1865.

Captain A. L. SCOTT, *Oswego*, *N. Y.*:

I desire to warn you against the operations of a substitute broker named Richardson. Receive no men from him, unless you have positive evidence that they are honest and reside in your district.

JNO. A. HADDOCK, *Major*, *&c.*, *&c.*"

Now what is the theory? The theory of the other side is—and there is where they lay their principal stress—that Judge Smith took $5,000 on the 16th day of March, when he and Haddock had, on the fourth and sixth of March, arrayed themselves against Richardson, and determined to break up his schemes—determined to break up his fraudulent system of enlistment. Their theory is, that on the 16th day of March, this judge took to this man, Haddock, with whom he had combined to destroy Richardson, *five thousand dollars*, to bribe him. To do what? To do the very thing they were determined he should not do. That is the theory of this prosecution. That is the theory upon which they claim that this respondent shall be convicted. That he took a bribe corruptly, wickedly and designedly, to bribe Haddock to give Richardson improper facilities on the 16th day of March, when, on the fourth of March, they had arrayed themselves in deadly hostility to him, saying to the Government that he was a scoundrel, and putting detectives on his track. Haddock was designing to get out of the meshes of Richardson. What does the whole deposition of Judge Smith show? That he wanted the papers, telegrams and letters which had been sent by Haddock to Richardson. That is what troubled the mind of Haddock, and yet the theory is that Judge Smith, knowing all about this, went to Elmira with five thousand dollars in bonds, numbered so that they could be traced anywhere, and put them in the hands of Haddock so that he should be still in the meshes of Richardson. That is absurd in this prosecution. Now, what was the truth? Mark! You must judge this case as you would judge yourselves

under like circumstances. You must judge it precisely as you would do if your friends were conferring together. Haddock, occupying the high position in the army under the general government, had been guilty of indiscretion, and he appealed to the respondent and desired him, as appears from the deposition before you, to get these papers. What did he do, as friend and counsel? Bear in mind. I may assume too much that you recollect these depositions, which I should not, because they are so voluminous and contain so much detail. You recollect that Judge Smith and Hoard went from Elmira to Rochester where they met Richardson, and that Richardson expressed great dissatisfaction because Haddock had not come. I want you to bear in mind. On the third Smith learns this from Haddock; on the fourth they telegraph to Washington that Richardson is a scoundrel. On the fourth Haddock had agreed to meet Richardson and did not go, and there was an interview between Richardson and the Judge. Judge Smith, as the friend of Haddock, plans to do what? To get the papers and documents from Richardson, so that he cannot use them against Haddock, and so that Haddock can do his duty to the government, and not be afraid of bounty jumpers and those who are defrauding the army as well as the treasury. Richardson complains, and he is irritated and mad that Haddock does not come, and complains in various ways, and the judge suggested (knowing the reason why Haddock did not come, as he swore) that he might be useful in settling the difficulty with Richardson. Of course Haddock knew that Judge Smith was friendly to him. From that time the negotiation goes on. They go back to Utica. Then on the 6th, the judge is sent with this memorandum prepared by Collins and he goes back to Elmira. But what is contained in that memorandum is not granted. The judge knew it would not be granted. How did he know it? He knew that on the 4th of March, Haddock had telegraphed to General Fry that Richardson was a scoundrel. Then why does he go on to get these facilities which were asked for in this memorandum? It was for the purpose of keeping in with Richardson. It would not do to say to him: "No, sir, you are a scoundrel—Fry understands you and you will not get these orders." The judge wanted to get these documents and telegrams and thus prevent him saying to Haddock: "Sir, I have got you in my power and you must give me such orders as I want." But Judge Smith goes on to Elmira, naturally, and his visit to Haddock results in

an arrangement between them by which there is to be a subsequent meeting at the Osborn House, in Rochester, with Richardson, at a time to be agreed upon by telegraph. Judge Smith then goes back, and subsequently a meeting was had between Haddock and Richardson at the Osborn House. As to that interview between Haddock and Richardson, we have no proof at all, and it is not in this case. There is no pretense that it is in the case. They have utterly failed to give any evidence on that, and we do not know whether there was a corrupt combination or agreement. But they got back to Utica and then what does Judge Smith learn for the first time. He knew that Haddock was anxious to get these papers, which were in the hands of Richardson, but he did not learn until then that a part of the arrangement by which these papers were to be obtained, was, that $5,000 was to be paid by Richardson to Haddock. Look at this which they say was an attempt to bribe Haddock. Judge Smith is informed by Richardson that he is to send $5,000 and the papers to Haddock, and then the orders which were contained in the Collins memorandum was to be given by Haddock for the benefit of Richardson. The judge said, naturally, when Richardson told him of this, "of course, that is right and proper" and he was willing to take five thousand or five hundred thousand dollars from Richardson or anybody else, if by so doing he could succeed in getting these papers which Richardson was holding in terrorem over the head of Haddock. Of course Haddock had the power to enable Richardson or other bounty brokers to defraud the Government to any extent, but if he made a misstep he was in the power of the bounty broker; and until he was out of his power the Government was injured and defrauded. Judge Smith, therefore, endeavored to get possession of these papers, for the purpose of preventing an officer of the Government being controlled for improper purposes. I say that a man who would thus undertake to get possession of these papers, which were in the hands of Richardson, not only was doing himself credit, but was doing the country a service. Suppose it had gone on and Richardson, having Haddock in his power, had got from him these improper facilities until he had on paper filled the entire quota of Oneida county and Judge Smith had been made aware of it, what would have been the result? So far from allowing it to go on he did what he could to relieve a public officer of this embarrassment. When Richardson handed him the $5,000 for Haddock, Judge Smith said: "That is not what I want. The main

thing is the letters and documents." Richardson replied by saying that they were in Albany. That is what he said along at first. Subsequently, upon being pressed again, Richardson was again told that the money was not the thing, but that the letters and documents were the main thing. What they were we do not know; they are not before us. Then Richardson said that his clerk, Collins, had them locked up in the safe, and he had gone to Whitestown. Finally, Judge Smith took the money without the papers. Why? Do you suppose that when he took that five thousand dollars on the 16th day of March, knowing what had been done on the 4th and 6th of March, he took it with the intent and design of obtaining these orders which were set out in Collins' memorandum? Is there any man around this circle so shallow as to believe that? Why did he go? If he had refused to go it would have broken off all negotiation, and all hope of obtaining these papers. To avoid that he consented to go, though he knew it was but a fool's errand, and to take the five thousand dollars; but in his own mind he knew he would not offer it to Haddock, and he did not; and he determined to return with the statement that Haddock declined to take the money and insisted upon the papers, and in that way he expected to get the papers for Haddock in the end. He went to Elmira with the money; he did not offer it to Haddock and Haddock did not take it, and he came back and returned it to Richardson, and that is an end of that—that is all there is of that. Is that bribery? Did he convey that money to Elmira with the intent and design of and wishing to obtain those orders? The man is mad who believes it. Why? The best reason in the world is that they had, days before, arrayed themselves against Richardson irretrievably. They could not revoke what they had done. The lightning, on the 4th of March, had conveyed to General Fry the statement of Haddock that Richardson was a scoundrel; and it had conveyed to Captain Scott, on the 6th of March, an order not to muster in men presented by Aaron Richardson; and yet the effort is to place this man in the position of trying to get Haddock to do for Richardson what both he and Haddock were trying to prevent. If Judge Smith expected to give a bribe to Haddock do you think he would have received the five thousand dollars in the presence of Collins? The prosecution lay great stress upon the fact that Collins had a seat in Judge Smith's office. He was a clerk in the judge's office, but he was in the employment of Richardson also.

When this five thousand dollars was given the respondent, which was to be taken to Haddock upon their theory as a bribe, Collins was there, and it was stated in express terms that it was deposited in the hands of Judge Smith. Do you think that when Judge Smith, in the presence of a witness, takes $5,000 from Richardson as a deposit, he is going to hand it to Haddock as a bribe, leaving Richardson in a position to demand its return, and in default of its return, to prosecute Judge Smith and send him to jail? That theory is as visionary as all the other theories against the respondent. There is not a foundation upon which any one of them can rest for a single moment. I am properly reminded that according to the deposition of Judge Smith he did not know what these telegrams and documents contained. He testifies that he knew nothing about them, except vaguely. He had a vague impression sufficient to impel him by reason of his friendship for Haddock, to believe that they implicated Haddock; that there was something about them which, if disclosed, would destroy Haddock's efficiency as an officer, and which would lead Richardson to feel that he had Haddock in his power. As to the telegrams, you do not know and cannot know what they are, as the case now stands. It is sufficient to say that they were regarded, by all parties, as somewhat implicating Mr. Haddock, so far as Richardson was concerned. But, they say, "Why should you endeavor to get possession of those papers, unless it was for the purpose of suppressing them in evidence? You have got them with the view of having them destroyed, so that they should not be used as evidence in a prosecution against Haddock, so that while you avoid one difficulty you run against another." I was exceedingly anxious, when I looked at the elaborate, brief and really able preparation which had been made by the distinguished gentleman who opened the case for the prosecution, to hear him produce some rule of law which prevented Judge Smith, or any attorney, from getting from an adversary of his client any paper which he thought would injure his client. I would like to know and understand, if my distinguished friend will inform me, what rule there is which prevents an attorney from getting documents or letters, which he supposes are in the hands of his client's adversary, from him, so that they cannot be used against him? Is there any such rule? If there is, it has never found its way into the books, and has never yet been discovered by the most sagacious lawyer who has ever practiced. Certain letters or documents have been sent from A to B, which A

thinks may injure him, and he says to his lawyer, "I wish you to get them." And we say that it was a very proper thing for a lawyer to do. What A might do with them is none of the attorney's business. He is simply retained to obtain papers, and in this case it was not only proper that he should do this, but it was one of the most laudable things that Judge Smith ever attempted to do in his life. I care not what Haddock had been; I care not how many frauds he had perpetrated; I care not whether he had a league with every bounty broker and every scoundrel in the State. On the 4th of March he put himself in the position where he said: "I will rid myself of this man Richardson, at all events; I will put barriers between me and him, which will prevent me hereafter from giving him any favor whatever," and from that hour, with that determination existing on the part of Haddock, there was not another fraud perpetrated in recruiting for the army in the county of Oneida, and the great and crying evil of bounty jumping in the State was stayed. I say it was a most laudable act on the part of Judge Smith, to attempt to put Haddock out of the meshes of this scoundrel Richardson, and instead of his being arraigned before a court of impeachment, he should be commended by every honest man. Yet this most infamous charge is brought against him that he confederated with these men, when in fact his effort was to prevent frauds, and stop a man in a career of villainy. I would like to know what would have been the judgment of the community in reference to Judge Smith, with these things brought to his knowledge, if he had left his friend Haddock in this situation, in the hands of this vagabond, without aiding him, and with Richardson wringing out of Haddock any facilities he might desire? The community would have said that Judge Smith was rotten and corrupt, and worthy only of the contempt of men for the course he had pursued, suppressing evidence! Destroying evidence! They cannot give it a name. They cannot show it to be an offense, and I say, upon every principle of justice, it was laudable and commendable in him, and it should recommend him to the favorable consideration of the Senate, instead of inviting their judgment that he be removed. Now, what further? By reason of the action taken by Haddock and this respondent, Richardson's proceedings were arrested, and so was he on the 14th of March following. He was a prisoner because of these frauds, and how he was discharged it is not necessary for me to say. It is enough that he was discharged. He is called in these charges a "notorious" bounty

broker, nevertheless he was discharged to be the principal witness against Haddock. But his proceedings were arrested. He committed no more frauds, and all in consequence of these orders of March 4th and March 6th, which have been read, so that Judge Smith's confederation did not help Richardson much. They charge that all this was done with a view to personal gain, and yet all the evidence shows that neither Richardson nor Haddock nor any mortal man ever paid this respondent, although it is shown that Richardson, when he was thus summarily stopped, was worth fifty thousand dollars. This man, who is poor in worldly goods, never got a dollar and was never promised a dollar, except as he might be paid for professional services rendered. Yet you are asked to remove him from his office and disgrace him and his family, and that is the theory at which it is sought to have this case tried and disposed of. I say that this is an infamous prosecution. It is a prosecution bottomed on political hate and venom. I know the heat of party excitement, but I do not believe, however hot the political furnace may be, that it is prepared to swallow up a person who is not guilty of a crime. The seventh charge reiterates this charge of bribery. The eighth charge refers to the alleged suppression of evidence, to which I have already referred. The ninth charge refers to the alleged neglect of the respondent in attending to the duties of his office as county judge. I think I have said all that is necessary in the opening, and certainly I have spoken much longer than I supposed I would when I arose.

TESTIMONY FOR THE DEFENSE.

HIRAM T. JENKINS, *for the respondent, sworn:*

Direct examination by Mr. Shafer.

Q. Where do you reside? A. I reside at Utica.

Q. What is your profession? A. I am a lawyer by profession.

Q. What is your official position? A. I am district attorney for the county of Oneida.

Q. And have been how long? A. For something over six years.

Q. Are you a son of Timothy Jenkins? A. I am, sir.

Q. Do you know the respondent, Judge Smith? A. I do, sir.

Q. How long have you known him? A. I have known him some ten years.

Q. As district attorney, have you had frequent prosecutions in his court? A. I have, sir.

Q. What can you say of the ability and promptness with which business was discharged in his court?

Mr. SEDGWICK objects as immaterial.

Mr. SHAFER offers the testimony to rebut the charge of habitual neglect, and omits the word "ability."

Q. In what manner did he discharge his official duties, so far as you know, as to promptness and faithfulness? A. So far as I know, he always discharged his duty as judge of Oneida county with promptness and faithfully. I believe he has held every court appointed for him to hold, but one, and then he came and opened it, and on account of illness was obliged to leave the court once.

Q. Do you remember this case of Charles E. Norton, who was bailed? A. I do, somewhat.

Q. Do you remember who applied to you upon the subject of his being bailed? A. I do.

Q. Who? A. Henry T. Utley. He came to me and wanted to know—

Mr. SEDGWICK objected to the conversation with Utley as immaterial.

Mr. SHAFER proposed to show that Utley applied to have the prisoner Norton bailed; that the district attorney agreed he should be bailed, knowing at the time that he was going into the army; stated that Judge Bacon had allowed it, and that that fact was communicated by Utley to Judge Smith, the respondent.

Mr. SEDGWICK objected, not to the fact of the application, but to what Utley said.

The PRESIDENT stated that, under the rules, all objections which were passed upon by a vote of the Senate, were required to be reduced to writing.

Senator FOLGER moved that so much of the rules as require the entering on the journal motions and objections, be suspended, so far as they relate to questions to witnesses and objections to testimony,—unless specially called for by some member of the Senate.

Which was carried.

The PRESIDENT then put the question on the objection,—which was overruled.

Q. Go on and state what was said between you and Utley on the occasion of that application? A. Utley came to me and said

there was a man in jail who was committed there upon a warrant, whom he wanted to bail out, and wanted to know if I had any objection. I told him no, as far as I was concerned; it was a matter which had been frequently done, and he could bail him out and take the consequences.

Q. Did he say for what he wanted to bail him out? A. He said it was probably to go into the army.

Q. Go on? A. I told him that I did not myself approve of such things, but the judges of our county had allowed such things to be done for that express purpose, and I had no doubt, but what he could get his bail in a thing of that kind, and obtain a release.

Q. What judges do you refer to? A. I told him Judge Bacon had done so frequently, to my knowledge.

Q. Was he judge of the Supreme Court? A. Yes, sir.

Q. In what cases had he done so to your knowledge? A. He had done so in the case of William Boyd.

Q. What case was that? A. There were six indictments against him for passing counterfeit money in the city of Utica.

Q. What was done in regard to bailing in the case of Boyd? A. He came from the city of Utica during the State fair. He passed six five dollar bills of counterfeit money. He was arrested and something near one hundred dollars was found on his person. He was indicted. His father came to bail him. His bail was placed at a thousand dollars in each case. An application was made to Judge Bacon. I opposed his being bailed. It was then alleged that he had enlisted and wished to return to the army. Judge Bacon allowed bail to be given. He went to the army or claimed to go to the army.

Q. He was bailed for the purpose of going into the army? A. Yes, sir.

Q. What other cases do you know of? A. The case of Thomas Kehoe.

Q. What was his case? A. Murder in the first degree.

Q. State that case? A. Thomas Kehoe was charged with killing a man in the town of Westmoreland, in the county of Oneida. An examination was had and he was held. An application was made to Judge Bacon for his discharge on bail before he was indicted, which I opposed on the ground that the evidence was not conclusive against him. Judge Bacon allowed him to go out on bail, in the sum of three thousand dollars. He was afterwards indicted for murder in the first degree, and an application at the

February term of the oyer and terminer was made to Judge Bacon to allow him to go out on bail, and the express purpose was stated there by his counsel (Mr. Pomeroy) that he intended that he should enlist in the army. Judge Bacon allowed him to go out on bail on an application by his attorney.

Q. Subsequently did you attempt to estreat that bond? A. I attempted to estreat both bonds, both Boyd's and Kehoe's.

Q. In which court? A. Oyer and terminer.

Q. Before whom? A. Judge Bacon.

Q. What did he say? A. Counsel came afterwards and defended those applications on the ground that the parties were in the possession of the United States, and therefore they could obtain their presence, and the court held that it was a defense.

Q. They showed he was in the army? A. Yes, sir.

Q. The judge would not allow you to estreat the bond? A. No sir.

Q. Was this before the bailing of Norton? A. Yes sir.

Q. Were there other cases in which the parties were bailed? A. Yes sir, a number.

Q. How many? A. I should say fifteen.

Q. It was a notorious practice to bail men and to let them go into the army? A. Yes sir.

Q. In spite of all your resistance you could not help it? A. No sir.

Q. Go on and state what else you said to Utley on the occasion of which you were speaking when I interrupted you just now? A. I told Utley that Judge Bacon did such things, and I had no doubt he would bail this man.

Q. What then was said or done? A. He said he would go on and bail him; that is about all the conversation.

Q. Did you subsequently have notice of an application to bail before Judge Bacon? A. Yes sir.

Q. Did you appear before Judge Bacon? A. No sir; I do not usually appear in those cases where they are not indicted; he was not indicted.

Q. Was there anything further between you and Judge Bacon on that subject? A. No sir.

Q. You distinctly knew that the design of Utley was to put him in the army? A. Yes, sir.

Q. That was open and avowed? A. Yes, sir.

Q. Was there ever after that any complaint made to you by the complainant, or any one, for the purpose of prosecuting Norton? A. No, sir.

Q. Were you in any way directly or indirectly called upon by any one to prosecute Norton, after that time? A. No, sir; never.

Q. A complaint was never returned? A. No, sir.

Q. Did you ever ask Judge Smith for the bond? A. No, sir.

Q. Did he ever refuse to give it to you in any way or form? A. No, sir.

Q. Did you ever hear it intimated that it was destroyed or secreted? A. No, sir.

Q. Did you ever have a suspicion of that kind? A. No, sir.

Q. What was the practice where Judge Smith took bail at chambers? What has been the customary practice on the subject? Did he file the bonds or keep them? A. As far as Judge Smith's practice was concerned in taking bonds, he usually retained them in his office until such time as I should call for them; I never called for any bonds from Judge Smith except where parties were indicted. If a complaint was made before the grand jury, and the party was indicted, I would then, if I did not happen to have the bail-bond with me, call upon the officers to obtain it for the purpose of estreating the bail-bond or recognizance. I never estreated in my life any bail-bond where no indictment was found. I never paid any attention to any such bail-bond in Oneida county. There are probably one hundred and fifty bail-bonds which I did not estreat, but they were in cases where no indictment was found.

Q. Did you ever call upon Judge Smith if an indictment had not been found? A. Never, sir. In regard to calling upon Judge Smith, I wish to say that Judge Smith very seldom filed his bail-bonds. I would call upon him and ask him if he had any bail-bonds. If he had I would take them.

Q. How was it with the Supreme Court judges? A. Judge Bacon would, if he had any, deliver to me the bail-bonds when he came into my office, or any recognizances that he took.

Q. He did not file them in the clerk's office? A. Not always.

Q. Did you occasionally call upon him? A. Yes, sir. It is not the practice of either of the judges to file their recognizances when they are taken. I did not call for these, because there was no indictment found, and I knew nothing about it in fact.

Q. Utley said nothing to you on the subject of his retaining the bounty? A. No, sir.

Q. You never inquired about that in any of those cases? A. No, sir.

[Cross-examination waived.]

JOSEPH BENEDICT, *for the respondent, sworn:*

Direct examination by Mr. Smith:

Q. What is your age? A. I am sixty-five years old.

Q. And what is your occupation? A. I am a lawyer by profession.

Q. Where do you reside? A. Utica.

Q. How long have you resided there? A. About thirty years.

Q. How long have you known Judge Smith, the respondent? A. Fifteen or twenty years; I do not recollect the precise time.

Q. Have you had occasion to practice before him? A. Considerably.

Q. Do you know the general manner in which he discharges his duties as a member of the county court and court of sessions? A. I regard him as a prompt and faithful Judge, and always have—as much so as his predecessor, Judge Root.

Q. Was his predecessor a good Judge? A. A first-rate one.

[Cross-examination waived.]

Mr. Smith said that it seemed the witnesses were not present, so that they could take up any one branch of the case and go through with it; and as they desired to exhaust each distinct charge separately, he would request that the Senate now take its recess.

Mr. Folger moved that the Senate take a recess to 3 o'clock, which was carried.

AFTERNOON SESSION.

The Senate met, pursuant to adjournment, when the hearing of the evidence was resumed.

JOSEPH S. AVERY, *for the respondent, sworn.*

Direct examination by Mr. SMITH:

Q. What is your age? A. Forty, this month.

Q. Your occupation? A. Lawyer.

Q. Are you surrogate of the county of Oneida? A. Yes, sir.

Q. When were you elected? A. Three years ago this coming fall; the same time Judge Smith was re-elected.

Q. How long and how well have you known Judge Smith, as a judge? A. Ever since he has been a judge of Oneida county.

Q. Have you practiced in his court? A. Yes, sir.

Q. Have done business before him as county judge. A. Yes, sir.

Q. How extensively have you had occasion to transact business with him as judge in the county court? A. During his last term, since I have been surrogate, I have been occasionally there; my brother, who is an attorney, and who is in the same office with me, has done considerable business with him in reference to real estate of infants.

Q. That would involve chamber business, as well as in court? A. Pretty much all chamber business.

Q. What have you to say in reference to his promptness and faithfulness in attending to and discharging the duties of his office? A. I have found no more difficulty in getting along with him than with judges ordinarily, I think.

Q. Is he as prompt in attendance, and faithful in the discharge of his duties as any other judge? A. I think so, as far as my experience goes.

Cross-examined by Mr. Sedgwick:

Q. Where is your office? A. At Clinton, nine miles from Utica.

Q. You live in Clinton? A. I do.

Q. Did you transact business with him in regard to the real estate of infants? A. Through my brother; my brother is attorney; I have been there myself; I did business for my brother, considerably; when I have been at Utica I have been concerned for him; my brother is an attorney, and occupies the same office with me.

Q. He is not in partnership with you? A. No sir, he is alone.

Q. During the year 1865, was Judge Smith pretty constantly in his office, he kept the Judge's office in Utica? A. He did.

Q. During that year, was he pretty constantly in attendance? A. I cannot say, except so far as my own experience is concerned.

Q. How often did you have occasion to visit his office during that year, from the fall of 1864 to the end of the war? A. I should think, perhaps, we had occasion to do business with him once in the course of two or three weeks on an average; I should think as often as that.

Q. Do you not know that he was gone a good deal during that year? A. I do not know much about that, not being at Utica except on business, and not going to his office except I had business there.

Q. When you went there on business, you had a previous appointment? A. I very often sent the papers down, or my brother would; if the Judge was not there, they would be left there, and signed when he came in.

GEORGE F. WEAVER, *for the respondent, sworn.*

Direct examination by Mr. SMITH:

Q. What is your occupation? A. I am a farmer, sir.

Q. What is your age? A. Fifty years or a little upwards.

Q. Are you one of the Excise Commissioners of Oneida county? A. Yes sir.

Q. When were you appointed? A. I was appointed in 1862.

Q. By whom? A. By Judge Smith and his associates.

Q. Who were the Excise Commissioners at the time you were appointed? A. After I was appointed, Mr. George Graham, Mr. Pomeroy Jones and myself.

Q. Who went out of the board first, after your appointment? A. Mr. Jones.

Q. Who succeeded him? A. Samuel R. Lewis.

Q. When was that? A. Mr. Jones, I think, held a year after I was appointed—a little over a year.

Q. Who went out next after Jones? A. Mr. Graham.

Q. When was that? A. That is a year ago last January.

Q. Who succeeded him? A. Mr. Reynolds.

Q. How did the board have their law business transacted at the beginning? A. At the beginning, I think we had four attorneys in the county—one at Camden, one at Remsen,—and I am not sure where the other was located; I think we had four of them.

Q. Were the attorneys retained for transacting civil business? A. Yes, sir.

Q. Who was the attorney at Utica? A. Mr. Barrows.

Q. When did you first hear of any change in the attorney at Utica, or any application to change the attorney at Utica, to supersede Barrows? A. I think it was some year and a half after I was first appointed.

Q. That would be in 1864? A. Yes, sir; it was either in 1863 or 1864, there was an application made.

Q. Who first brought the question to your attention? A. I cannot say who first brought it. The question was first presented by a number of different gentlemen at Utica; Mr. Hunt was one; Mr. Chas. Hopkins; Mr. Roscoe Conkling spoke about it, and there were some others.

Q. Who did they want appointed? A. They wanted to have Mr. French appointed.

Q. What is his given name? A. James G. French.

Q. Did you have any conversation, about that time, with Judge Smith, upon that subject? A. The judge called upon me; we were in session at the court house in Utica, and the judge came up to the court house and told us what his business was.

Q. What business did he state? A. He called Mr. Lewis and me out, and said he would like to have Mr. French appointed; we did not give him much of an answer the first day; he came up again, either the next day or the same day; I know he was there twice about it; at the last time he came there, we told him we did not feel disposed to appoint Mr. French; that, if it was a thing he wanted himself, it would be a different thing; we were not disposed to appoint Mr. French.

Q. That disposed of the French case. Was there a question raised afterwards as to appointing a substitute for Barrows? A. There was nothing said about an attorney until very nigh a year after; I think it was very nigh a year after that the judge came to me with an appointment, signed by Mr. Lewis, one of the commissioners, appointing himself attorney. I at first refused to sign it; I told the judge I thought it was not treating Mr. Barrows very well not to let him know he was to be turned out, and I first wanted to see him, before I signed it.

Q. What did the judge say to that? A. I do not know that he made any reply. I went to see Mr. Barrows. I subsequently signed the judge's paper.

Q. Did you see Mr. Barrows? A. I think he was not at home; I think he had gone to attend court in Otsego county; I signed the judge's paper afterwards.

Q. Before you saw Barrows? A. Yes, sir, I think so.

Did the judge use any force or duress? A. No, sir.

Q. Any appliances of any sort? A. The judge stated what the circumstances were. He gave me to understand that his circum-

stances were such that he wanted to enlarge his business; I know he mentioned that his brother had died and had left children, and he wanted to take care of them.

Q. He wanted to increase his income, and gave that as a reason why he wanted the appointment? A. Yes, sir.

Q. Was anything said about what effect it would have upon his income, at that time—how much it was worth? A. I do not know whether there was at that time, or not.

Q. You say you signed his appointment? A. Yes, sir.

Q. Was that a deliberate and free action of your own judgment? A. Yes, sir.

Q. And did you honestly believe that that was a faithful discharge of your duty as commissioner? A. Yes, sir.

Q. And a judicious and honest appointment to be made? A. I should not have made it if I did not think so.

Q. Was there any condition or contingency upon which this appointment of Judge Smith was to be made? A. No, sir.

Q. It was your own free will? A. Yes, sir.

Q. What next took place in reference to this appointment of of attorney—after you signed the paper appointing Judge Smith? A. The next thing that I know about it Mr. Barrows felt disappointed about it, and he came to me and asked me if Smith was appointed; I said he was.

Q. How soon was that after you signed the appointment? A. I should think three or four days.

Q. How long had Barrows then been attorney for the board at Utica? A. I guess he had been attorney of the board from the first passage of the law.

Q. He came to you and expressed disappointment, what then? A. He wanted to know whether it was right for a judge to hold it. I said I did not know, I supposed it was. He said Smith was a judge, and he thought he could not act—could not be attorney and judge both. I said I did not know how that would be; I did not know what was to hinder.

Q. What then? A. There was so much transpired with Mr. Barrows that I do not know I can undertake to say.

Q. Was Mr. Barrows very importunate about it? A. Yes, sir; I do not know but he came to my place twenty times about it; he was very anxious we should supersede the judge and put him in again; I told him I should not do any such thing as that; he went and got a petition drawn up.

Q. Where was the next meeting in reference to the transaction? A. There was a meeting at Barrows' office, when the judge gave up Mr. Barrows the paper.

Q. How long after the appointment was that? A. Well, I should think it was as much as three weeks; I do not know but longer.

Q. What took place then at the meeting at Barrows' office in Utica? A. Mr. Barrows and the judge counted some money over there; they were figuring away; I would not undertake to say what the amount was.

Q. What was the money for? A. The consideration was for this attorneyship.

Q. Can you relate the conversation? A. I should think the arrangement was made before I went there.

Q. Give the conversation you heard? A. When I came in there they sat right down and Mr. Barrows gave him a check and some money.

Q. What did Smith do? A. Smith gave him up the appointment and Barrows put it in the stove and burned it.

Q. Was there any further conversation thereon? A. After the judge started to go out and got to the door Mr. Barrows said to him: "Judge Smith, you intend to appoint Mr. Weaver again?"

Q. What then? A. I turned round and said: "Mr. Barrows, that has nothing to do with it; I do not want you to put anything of that shape into any appointment I am to have."

Q. What did Smith say to that? A. He said he had intended to appoint me long before; I told him that had nothing to do with the matter.

Q. Did Judge Smith say whether your appointment had anything to do with this attorney business? Did he say anything on the subject? A. No, sir.

Q. Was there anything said there in reference to the value of this appointment? A. I think there was, by some one.

Q. Give us the relation of what you or any one said about it? A. I think, either at that time or at some time before, I guess at that time, I told the judge I thought the position was worth more than the judge of the county was.

Q. How much is the salary of the Judge? A. $1500 or $1600.

Q. From your knowledge of the business, do you think that was so? A. I always thought so.

Q. What was the next step taken in reference to the attorney-

ship in Utica, after this paper was given up? A. That is all there was about it at that time.

Q. Any subsequent proceeding about it? A. No, sir.

Q. Was Barrows afterwards re-appointed by the board? A. He was appointed a month or six weeks after, at a regular meeting.

Q. Did Judge Smith have anything to do with it? A. No, sir.

Q. Did he ever say anything about it, to your knowledge? A. No, sir.

Q. Or attempt to influence your action on the subject, either directly or indirectly? A. No, sir.

Q. Was there any condition or agreement between the parties, to your knowledge, in reference to the transaction between Barrows and Smith, having any influence upon the action of the board? A. The Judge never said anything to me, nor I to him.

Q. Or did you ever hear him talk with Barrows or any one on that subject? A. No, sir.

Q. Was there any condition as to your re-appointment? A. The Judge never said a word about anything of that kind.

Q. Was there any condition to the effect that the arrangement by which Barrows paid the $500 was conditioned upon your re-appointment? A. Not to my knowledge.

Q. Upon your first appointment, was there any intimation of the Judge, direct or indirect, that he was to have any influence on your action in the appointment of any one as attorney? A. Not the least in the world. The Judge never suggested to me, or asked the question, will you appoint this man or that man, from first to last.

Q. How much of your term had you to run at the time of the re-appointment of Barrows? A. There was about two years.

Q. Did Barrows, in soliciting this re-appointment, say how long he wanted the appointment? A. He said if he could hold it two years longer, he could get himself in shape.

Cross-examination by Mr. Sedgwick:

Q. Where do you live? A. In the town of Deerfield, adjoining Utica.

Q. Mr. Barrows is a friend of yours? A. Yes, sir.

Q. How many times do you think he came to see you, after the appointment of Judge Smith? A. I think he came there twenty times.

Q. Who asked you to attend the meeting between him and Judge Smith, at his office? A. Mr. Barrows.

Q. Did he tell you what was to be done beforehand? A. Yes, sir.

Q. Did he tell you the terms of the bargain by which he bought the office of Smith? A. He did.

[Mr. Shafer objects to the term "office."]

Q. What did he say he was to give for the office, or place? A. He came to my house and wanted I should go to Utica; I told him I could not go; I refused to go to Utica at first. Finally he insisted upon my going, and said he had made arrangements with Judge Smith to give up the appointment. I consented to go; I told him I would be there at the office at such a time.

Q. Then you went to his office by appointment? A. Yes, sir.

Q. Expecting to meet Judge Smith there on the business of the purchase of this place? A. Yes, sir.

Q. And you knew what the terms were? A. I did.

Q. You went there at that time? A. I did.

Q. And found these parties there? A. Yes, sir; I think they were there when I got there.

Q. Was any one else there? A. No, sir.

Q. None but you three? A. I think not.

Q. Were the terms of this purchase then talked over between you in their presence? A. I think not, sir; I do not think there was anything said after we got in; they seemed to understand what they were doing.

Q. Did you understand it? A. I did, from Mr. Barrows.

Q. And they went to work counting the money, after you got there, without anything being said? A. Yes, sir.

Q. How long did that take? A. Judge Smith was not there long; I was there after the Judge went away.

Q. Did you make any remark about it? A. No; I went and sat down at one end of the office.

Q. What did Barrows say to Smith after he started to go away? A. Barrows said, as the judge got to the door, "Judge Smith, of course you intend to re-appoint Mr. Weaver."

Q. Is that the first observation you heard in the office? A. No, sir, I think not; I think there was some conversation there.

Q. Did Mr. Barrows say this to him—"What assurance have I, when I pay you this money, that I shall be continued in office, and that you will not be re-appointed again?" Did he not say

that or in substance? A. I would not say he did, or that he did not: my impression is that he did not; I think all Mr. Barrows said to him, after the judge started to go, was "Judge Smith, do you intend to appoint Mr. Weaver?"

Q. What did the judge say? A. He said he had intended to do that before.

Q. Did he do it? A. He did.

Q. According to the understanding? A. I never had any understanding with Judge Smith about being re-appointed.

Q. Did you understand then that he was to re-appoint you? A. No, sir.

Q. Did he not give you the assurance on that occasion? A. I never had any assurance.

Q. Did he not say then that he would do it? A. I did not want any such assurance.

Q. The question is what you got, not what you wanted. Did he then tell you that you should be reappointed? A. He did say just what I have stated.

Q. And he did, according to that assurance, re-appoint you? A. Yes, sir.

Q. You say that Judge Smith, on the occasion when he applied for the appointment of French, called you and Lewis out? A. Yes, sir.

Q. Called you away from the room where you were sitting as a board? A. Yes, sir.

Q. Where did he take you to? A. To a stoop on the north side of the court house.

Q. What conversation took place there after you got on the stoop? A. I would not undertake to tell it all.

Q. Tell all you remember. He took you outside. What did he say? A. He asked if we could not appoint French; he was very desirous to have Mr. French appointed by the board.

Q. You say that you told him that you would appoint him (Smith) if he asked it for himself? A. I did not say we would appoint him; he came twice.

Q. Was that all the conversation out there? A. No, sir.

Q. Tell all that you remember of it? A. It was in relation to the appointment of French.

Q. What did he say in relation to it? A. I would not undertake to repeat what he did say.

Q. That is all you remember—that he took you two men out on the north stoop of the court house, and said so much, and that was all? A. I would say the whole conversation was in regard to the appointment of Mr. French.

Q. Where did he see you the next time? A. At the court house again.

Q. Did he take you out again? I think not; I think the conversation was in the hall.

Q. What was that conversation? A. That was in regard to Mr. French's appointment—whether we could do it or not.

Q. On that occasion you told him you would appoint him if he would apply? A. We told him we could not appoint Mr. French; that if he himself wanted the appointment it would be a different thing.

Q. Did he not tell you on that occasion that the appointing of French would be the same thing; that he had made an arrangement, or was making an arrangement with French, to divide the profits of the office with him? A. No, sir; he did not.

Q. Did he not tell you so on any occasion? A. He did not, that I remember; I do not think he did; he did not solicit me, after getting a decided answer.

Q. Did you hear what the proposed arrangement was? A. No, sir.

Q. Never heard it talked of? A. No, sir; never until I heard it here.

Q. But you told him if he made an application for appointment you would appoint him? A. We did not say we would appoint him. We said it would be a different thing.

Q. You would not appoint French; but it would be a different thing with him? A. Yes, sir.

Q. How long after did he apply for the appointment? A. I think about a year.

Q. Did he say anything about it in less than a year? A. No, sir. This conversation, when he applied to get French appointed, was in April or May, and when Smith applied was in February or March afterwards.

Q. Nearly a year after? A. Yes, sir.

Q. You say that having the appointment signed by one of the commissioners, he applied to you? A. The judge had the appointment signed by Lewis when he came to me.

Q. It was a written paper? A. Yes, sir.

Q. He was not appointed at a meeting of the board. A. No, sir, it was no meeting of the board.

Q. You remonstrated with him about signing it before you saw Barrows? A. Yes, I did.

Q. You said you must see Barrows? A. I told him I thought I ought to see him.

Q. How long after that did you sign the paper? A. I think it was the same day.

Q. Without seeing Barrows? A. Yes, sir.

Q. Did you know when Reynolds signed it? A. No, sir.

Q. He had just been appointed? A. Yes, he had just been appointed.

Q. How long was the talk that Barrows was to have it? A. I do not know of any talk how long he was to have it; he could be removed the next day.

Q. You would not have considered it was fair to remove him the next day, having seen him pay $500 for it; you would not have considered that according to the spirit of the agreement? A. If the commissioners had anything to do with the agreement, I would not; but I do not know that they had anything to do with it.

Q. Yourself having seen the money paid, you would not have thought it was according to good faith to have him turned out next day, would you? A. I think it would be right for him, if he had been turned out the next day.

Q. You think it would? A. I think so.

Q. Did you suggest that to the board, that you had seen him buy the office, and it was not right to keep him in it, when his name came up for reappointment? A. I did not.

Q. Did you think it right at the time? A. I do not know that I did.

Q. You thought then it was right that he should have the fruits of his bargain? A. No, I think not; if he had been turned out next day it would be right.

Q. But you thought then it was right that he should have the fruits of his bargain? A. I do not know that I thought anything about it.

Q. It did not occur to you? A. I do not know that it did.

Q. When this interview took place at Barrows' office, did you go to the office with Judge Smith? A. I do not know but I did.

Q. You went together there? A. It is my impression that I met the judge before going to Barrows' office.

Q. You went in with him? A. I think so.

Q. Then you heard and saw all that took place during the interview? A. I did not see all that took place.

Q. Did you shut your eye when the money was counted out? A. I turned the other way.

Q. And winked hard? A. I was not very well, and had turned the other way.

ALMON W. REYNOLDS, *for the respondent, sworn*:

Direct examination by Mr. SMITH:

Q. What is your occupation? A. I am a farmer; perhaps I do as much of that as anything else.

Q. What is your age? A. Fifty-eight.

Q. Where do you reside? A. Down at Augusta, in the county of Oneida.

Q. When were you appointed excise commissioner in Oneida county? A. In May, 1864.

Q. From whom did you get your appointment? A. In the court of sessions, from Judge Smith and his associates.

Q. Was there ever any condition intimated or communicated to you by Judge Smith or anybody else, by which you was to have this appointment? A. I don't know that I understand the question.

Q. When you was appointed excise commissioner, was there anything expressed by Judge Smith, or anyone else on his behalf, in reference to his having any influence over your actions in the appointment of attorney, or any other respect? A. Never.

Q. Has he ever attempted in any respect to influence your actions as excise commissioner? A. Never.

Q. Did he in anywise attempt to influence your action in the reappointment of Mr. Barrows? A. No, sir.

Cross examination by Mr. SEDGWICK:

Q. Was Judge Smith appointed attorney of the board at any meeting of the board, regular or irregular? A. No, sir; I conclude not.

Q. Where did you get the paper; who presented it to you for your signature? A. It came in the post office.

Q. Who from? A. It came from one George W. Smith.

Q. The letter? A. Yes, sir.

Q. Requesting the appointment to be signed? A. Yes, sir.

Q. He never acted under the appointment, did he? A. As attorney for the board, I think not.

Q. Did you ever inquire of him why he did not act? A. I don't know that I ever did, particularly of him.

Q. Was it a matter of any surprise to you that he did not act under that appointment? You knew it was a valuable position, didn't you? A. Yes, sir; I supposed it was.

Q. Did you ever make any inquiry why he did not proceed to act under that appointment, of Mr. Smith or either of the commissioners? A. There were some inquiries made of me why he was appointed.

Q. That was not the question. I ask you whether you made any inquiry of him or anybody else, why he did not act under that appointment. It was complete when you signed it? All three of you had signed it, hadn't you? A. Yes, sir; when I signed it.

Q. Did you ever have any curiosity sufficient to ask anybody why he did not go on and act as attorney for the board? A. He was removed in a little while.

Q. Was there any complaint against him under which he was removed? A. I don't know that there was.

Q. On whose request was he removed? A. There was a petition.

Q. Do you mean to say he was removed upon a petition?

Objected to by Mr. Shafer. Objection overruled.

Q. Do you say he was removed upon a petition? A. Well, I cannot say that it was exactly that.

Q. At the time when, three or four weeks afterwards, you reappointed Mr. Barrows, did you understand that Barrows had bought the place of him—had bought him out. A. I understood that that matter was arranged between Mr. Smith and Mr. Barrows.

Q. And you appointed Barrows to carry out the arrangement, as you understood it? A. We appointed Barrows.

Q. Did you appoint him to carry out the arrangement, as you understood it? A. I don't know as that had any influence with my action at all.

Q. Did you know what Barrows gave for the office? A. I don't think I did at that time.

Q. Did you make any inquiry, when they told you it was

arranged, what the arrangement was? A. I can't say whether I did or not.

Q. Who told you it was arranged? A. I think Barrows.

Q. Did you ask Judge Smith about that? A. I think I did.

Q. He said it was arranged? A. I think he did.

Q. Did you ask either of them the terms of that arrangement? A. I don't think I did, nor I don't think they told me.

Q. You don't know, only you made the appointment to carry out the arrangement. Was it talked of at the time Barrows was reappointed by the commissioners that it was arranged between Barrows and the Judge? A. I don't think it was.

Q. You think you recalled your appointment of Smith and reappointed Barrows without anything being said of any arrangement, is that your memory? A. At the time the appointment was made I don't think there was any.

Q. Well, before? A. I think I learned from Barrows that the matter was arranged as between him and Mr. Smith.

Q. You learned that before you reappointed him? A. Before we reappointed Mr. Barrows.

Q. You learned it from Smith also? A. Yes, sir.

Q. Was there any talk between the commissioners that it was done to carry out their arrangements? A. I don't know that there was. I suppose we might have appointed anybody else.

Q. I ask you if it was talked over between the commissioners that that was the arrangement, and that you were to carry it out? A. I think not.

Q. Was the appointment of Barrows made at a meeting of the commissioners? A. I think it was.

By Mr. Folger.

Q. How long after the appointment of Judge Smith was the reappointment of Barrows? A. I think I signed the appointment of Smith about the 22d of February, and I think the appointment of Barrows was some time in April.

Q. Was there any business of the board intervening, requiring the attention of an attorney? A. I guess not.

Re-direct examination by Mr. Smith:

Q. I notice you used the expression, you "signed an appointment for one George W. Smith;" why did you use that form of expression? Because that I did not know at the time I signed

the paper that it was Judge Smith. I was acquainted with Judge Smith, but I was not acquainted with his handwriting. I supposed it was some other attorney in the city of Utica, that my associates desired to have appointed. I had never met with the board. I was a stranger to every one of them, and had never known Mr. Lewis or Mr. Weaver.

Q. Then how came you to sign the paper? A. Because I had a letter from Mr. George W. Smith, asking if I would concur in the appointment of him for attorney, provided the other Commissioners should make the appointment; in a few days the appointment came, signed by the other Commissioners, and I signed it also, and put it in the mail and sent it back; at that time I was a stranger to the Commissioners; was not particularly a stranger to Judge Smith, but I did not know his handwriting; I didn't suppose it was Judge Smith that was soliciting the appointment.

GEORGE W. SMITH, *the respondent, sworn.*

MR. SHAFER: There are a few questions we desire to ask the Judge, in addition to his deposition; they are principally those which were ruled out on the objection of the Judge Advocate.

Direct examination by MR. SHAFER.

Q. Please state to the Senate the circumstances under which the affidavits spoken of in the first and second charges, were prepared by yourself? Q. These affidavits were prepared in most cases, so far as I recollect now, all of them, where parties appeared and made a statement of the ground of exemption; and in cases where it was found sufficient, or where I deemed it to be sufficient, I reduced it to form in an affidavit for the purpose of preserving the record, and showing the military officers who were concerned in the matter, the grounds upon which they had been exempted.

Q. In case you found the application insufficient what was done then? A. There was nothing done about it in that case.

Q. There was no affidavit drawn? Now, in any case, was there any affidavit drawn except for the purpose of preserving in form of writing what had been previously submitted to you to decide upon? A. There may have been some instances; I don't recollect distinctly about that; I only speak of the general practice.

Q. Was there any to your recollection? A. I don't recollect any.

Q. How many of such affidavits do you think you drew? A. I think I drew perhaps a dozen; perhaps somewhat more than that.

Q. State the maximum, the outside? A. I think not twenty.

Q. Please state to this Senate what was the charge that you made for drawing these affidavits? A. One dollar or a dollar and a half; I think, in some instances, it was two dollars.

Q. Did it, at any time, exceed two dollars? A. I don't recollect any instance exceeding that.

Q. Did you, at that time, have the least suspicion that you were or had the intention of violating any official duty or any statute?

Mr. SEDGWICK: I object to the question. He has no right to state, when he has committed an illegal act, that he had no criminal motive.

Mr. SHAFER: If I am right in my rule of law, (and that I am right there is no lawyer about this circle who has given the subject the least attention who will deny,) the question here is, With what intent or design did Judge Smith do these things? If he was pure at heart, there was no intent to violate the law. If he did not understand he was violating the law, he has committed no offense. Now I will tell the distinguished counsel on the other side that the Court of Appeals has held that where an intent is to be shown, you may ask the party whether he intended to cheat or intended to defraud. The question is, With what intent did you do this thing? did you intend to violate the law? did you believe you were violating the law? or did you do it inadvertently, innocently and honestly? We propose to search the heart of this man on the stand. We put it to him on his oath: Did you then know, did you then intend, did you then design, to violate the law? or was it inadvertent? was it a mistake? was it done without any design to violate the laws of the land? Now, if necessary, I will send for the decision of the Court of Appeals. It is a question that has been debated again and again, whether you can ask a party whether he intended to do or not to do, whether he intended to commit or not to commit, a particular fraud. It has been settled, irrevocably settled, that when the question is as to what was the intent with which the act was done, that you may inquire of the party who did the act whether he did it with or without the intent; and this is the precise ground upon which we put him upon the stand —to search his heart. You have got to get at the heart of this respondent, in passing judgment upon this act, and you cannot do it in any other mode than to put the question, What was the in-

tent, the design, with which you did this thing? Was it honest? was it a mistake? was it inadvertent? or was it willfully designed and carried out in violation of the law? I say we are entitled to the evidence upon the most familiar principles governing the admission of evidence.

MR. SEDGWICK: I don't think I ought to take up much time in discussing a case like this. The party who stands charged before you with misconduct, and who, if he is guilty, is to be removed from his office, is put upon the stand (somewhat an unusual procedure, but we do not choose to object to it). He may testify as to facts, but it would be, I think, going beyond any decision thus far made, or that ever will be made, to say that where a judge is brought before this tribunal for violating his duty as a judge, for taking fees when he is prohibited by statute from taking fees or compensation in any case or proceeding before him, that the judge, violating the laws, should be called on to say, to be permitted to testify, that he did it innocently, or that he did not know what the law was, or if he did know what the law was, and knew that he was taking fees that the statute prohibited, that he did not mean any harm by it. It strikes me as absurd upon the face of it, entirely absurd. If he did take fees, he is bound to know the law, independent of the presumption that would arise from his position as judge. He is bound to know the law, and he cannot excuse himself any more than the culprit, who is brought to the bar of a criminal court, can exculpate himself by saying that he did not know what the law was; that he took what did not belong to him, without any design to injure anybody, with a clear conscience. As I said in the outset, the proposition strikes me as too plain to require any extended argument.

MR. SMITH: I do not understand the counsel to dispute this doctrine or principle of law as stated. The question came directly before the Court of Appeals in a case arising in Greene county, where an action was brought to set aside a judgment. The assignor was one of the parties defendant to the action. He was put upon the stand as a witness, and the question was propounded to him, whether he had any fraudulent intent in making the assignment? The Court of Appeals held it was a proper question. They say that the intent with which a party acts is a fact which may be proven like any other fact; where, under the rule of the common law, a party was not a competent witness you had a right

to rely upon such surrounding circumstances as would, to the satisfaction of a court or jury, establish the probable intent of the party; but where, by the law in all cases of special proceedings of the class to which this case belongs. he is made a competent witness; he is just as competent to testify as to the intent with which he did any act as to any other fact in the world. The learned counsel says it would be unreasonable here, in consideration of the position that this gentleman occupies, to allow him to give testimony upon that subject. It is an ungenerous argument, and one wholly unsustained, either by principle or by law. Why, sir, there is not probably a single man here in this chamber—there is, perhaps, not a single man in society so pure but what in many particulars he violates the law—the civil law and the criminal law of the State; and when you seek to hold him accountable for any wrong, before you can convict him when charged with a crime, you must establish a criminal intent of the party. The counsel says the judge must be presumed to know the law. Well, to some extent that presumption applies. Men are held accountable to the law, and when they are arraigned for having violated the law the legal presumption is they knew the law. But in this case, in a trifling particular, involving the sum of one dollar—eight shillings of United States currency; when it is charged that a man who for forty years had led an honest, upright life, and who for years had enjoyed the confidence of the county, and had been selected to sit in the highest judicial office in the county to administer the rights of its citizens, when it is said that such a man had turned criminal and committed a violation of the law that would subject him to impeachment—I say when such a charge is made, it is reasonable and just that the party accused, having been made a competent witness, should be allowed to state with what motives he acted; and if a number of his fellow citizens of his county came to him, and it was an accommodation to a party that he should draw this paper, and the Judge was not aware of any statute prohibiting it, it is but just that he be allowed to state these facts, as material and important, and tending to enlighten this court, and enable it to judge with some propriety as to what disposition should be made in this case. I can mention an illustration: Take a judicial officer of a still higher character. There is a statute in this State prohibiting judges of the Supreme court from giving advice in matters of which their court might have jurisdiction. Now, what judge of the Supreme court in this State,

take the best among them all, is there in this State, who could stand up and say he has never given advice? Why, if an old friend or neighbor should come in and talk to him, he would not suspect that he was violating any law in giving him such directions as he might think would tend to his interest and to justice. If such an officer was charged here would there be anything wrong in putting him upon the stand and asking him upon his oath to give his explanation of the motive upon which he acted? It has been said during this trial by the learned counsel, that they desired to give Judge Smith every opportunity to explain his position, to justify himself in reference to the charge that has been made against him. Early in the trial there was a great deal of anxiety to get at this case, because it was said the people of Oneida county were anxious to get rid of this matter; but as the evidence has been developed here that argument has given place to a great pretention of fairness. I submit to the Senate, that in this particular and in every other, we shall be allowed to question this man, and ask him with what intent he committed this act. I say that is the question, and I can produce the authority of the court of Appeals with reference to a fraudulent creditor.

MR. SEDGWICK: The case to which the counsel alludes is an extreme case. But the point does not reach this by any means. The question of fraud in the disposition of property, in the assignment or sale of property, is declared by the statutes to be a question of fact to be submitted to the jury or referee. Now, where the circumstances are such as show a fraudulent intent, the party may deny it. The question decided in that case was, that his statement shall go for what it is worth as to his intent. It may be controlled or overruled by accompanying facts, to show that he had a different intent from what he testified to. Here is a case where the intention is not a question of fact at all. Here is a statute forbidding a judge from taking fees. The question is whether he has violated the law, whether he has taken fees in cases prohibited. It is not a question whether it was done with any evil intent. If he has violated the law he is guilty, and if you think it worth the punishment of removal from office, you may remove him because it is a violation of the statute. There is no good intent in violating a law; there can be none, and the judge or citizen who testifies to it is testifying to something that will convince nobody, and is absurd upon its face. It is a question whether he violated that statute, whether he took fees which were

prohibited by the statute, and if did the criminal law adjudges his intent to be bad.

Mr. SMITH: I want to make a single remark in answer to this extraordinary argument that the question to be decided here is a question of law, not of fact, and the attempt to distinguish this case from that which I quoted of the fraudulent debtor. Why, the fraudulent transfer of property is a crime, it is a misdemeanor. But the counsel says that where a judge violates a statute, as a matter of law it is a wrong, it is a tort, it is corrupt as a matter of law, and it ceases to be important to inquire whether he acted innocently or not. It is proved here that an eminent jurist, Judge Bacon, was in the habit of letting prisoners to bail who were brought before him. But instead of complying with the law by filing the bond immediately in the county clerk's office, he held them in his hands until the district attorney called for them. Now, suppose Judge Bacon was on trial, would the learned counsel sit here and say, as a matter of law, he is guilty? The law made it his duty forthwith to sign that bond; he was not allowed to say he was not aware of any such provision making it his duty to go to the clerk's office as soon as it was signed and place it on file; therefore, without intending anything wrong to any one he kept it in his table drawer? Take this case of Judge Smith. There is a charge here in reference to his omission to file a bond; precisely the same case. Is there any evidence that would justify this court in convicting him, by proving that mere fact, as a matter of law? Is there any such rule as that? I always supposed that the motives that influenced the action of a party were a material thing to convict him of a tort.

If a man should lay violent hands upon me, it is a violation of the civil law; the party is guilty of a crime; and when you try either a civil action or an indictment and bring that charge against the defendant, don't you inquire the motive with which he acted? If done by accident, without intent to injure, would the party be guilty of assault and battery? Isn't it essential to inquire and decide, as a matter of fact, the intent with which the act was done—whether it was a corrupt action or not; whether it was a willful wrong or not; whether it was the result of inadvertence, want of knowledge of the particular provision of the statute? This is the question.

Mr. SEDGWICK: Mr. President—I don't think that the illustration has helped the gentleman any. Judge Bacon is proved,

by the only witness upon the subject—the district attorney—to be in the habit of taking his bonds to him and handing them to him to be filed. The statute is merely directory. If there was nothing more in this case, than there was in the case of Judge Bacon, no complaint would have been made of this judge. But the parallel stops with Judge Bacon far short of this case. Judge Bacon never applied to, and urged his personal friends to allow the rules of the enlistment office to be violated for the purpose of giving the whole soldiers' bounty to his partner or his friend to become his bail, and procured the enlistment of a felon. Never any such case as that occurred under Judge Bacon's administration, and there never will be to the end of time. Now, I say the counsel has not met the argument. In the case of a fraudulent disposition of property, the fraudulent intent is a fact to be tried, and it may be proven, and the party, being a witness, he may be asked as to his intent. Was it ever heard of that a person, indicted for assault and battery, could come in and prove that, in fact, when he put his hand upon a man in such a way as to knock him down, that he did not intend to knock him down; that he merely intended to lay his hands upon him lightly, but made a mistake; that it was innocently done; that a man may be assaulted to the destruction of his life or his limbs, and an innocent act be proven?

Mr. SMITH: Could not he show it was by accident?

Mr. SEDGWICK: That would be a perfect justification; but it does not reach this case at all. Here is a judge who time after time knowingly violates the law. He knows what the law is—everybody is presumed—when he is complained of for a criminal act, to know what the law is, and to intend the consequences of his own act. If he goes on deliberately violating the law, taking fees that the law says he shall not take, I say it is absurd. I repeat what I said, that it is absurd to undertake to show by him that he had no evil intent in his continued violation of the law of the land.

The question on the objection of Mr. Sedgwick was put to vote, and the objection overruled.

Q. Did you at that time have any suspicion that you were, or intention of, violating any official duty or any statute? A. I had not.

Q. Had it occurred to you at that time that the provisions of the Revised Statutes prohibited the taking of fees for drawing papers? A. It had not. When the question came up on my examination at

Elmira it was brought to my attention, and I went home and examined the statute and found the prohibition which forbid judges receiving fees for drafting papers. That was my first knowledge of it.

Q. How long was this after you had drawn those affidavits? A. That I examined? It was directly after the trial.

Q. How long after you prepared the affidavits was it? A. Some few months.

Q. Up to that time you had not the least suspicion of any statute on the subject? A. No, sir, never; I was aware of the statute against taking fees as such; but the provision prohibiting judges being paid for drawing papers I was not aware of until the question was raised at the trial at Elmira; I then examined it and found how it was.

Q. Within what time were these affidavits prepared? A. Within no great period of time.

Q. About what time? A. Two or three months. It was an open, public transaction in my office.

Q. About Utley's preparing the affidavits, was that after you had wholly examined the applicants for exemption? A. I think not. I think probably he reduced their statement to writing.

Q. What was done with the affidavits? A. They were then brought by the party to me.

Q. Did Utley in any case appear before you and claim that the party should be exempted by reason of the affidavit? A. I think not in any case.

Q. How certain are you on that point? A. I feel entirely positive.

Q. It was reduced to writing and then presented to you? A. Yes, sir; by the party. I recollect no instance where it was not so done.

Q. In how many instances, according to the best of your recollection, did Utley prepare those affidavits? A. He prepared them in a considerable number of cases; probably thirty or forty in all.

Q. Do you know what the charge was in such cases? A. From a dollar to a dollar and a half.

Q. Was there anything in the charges made by you or by Mr. Utley, for the preparation of those papers, unreasonable or exorbitant? A. It was the ordinary charge which I should have charged any person for drawing an affidavit—the ordinary charge for the scrivener's duty of putting down an affidavit on paper.

Q. I desire to put to you the general question, whether you desire to add anything by way of explanation to the deposition which has been read, and which was made by you in the Haddock trial, upon the subject of the appointment of Barrows? A. My memory of what is in the affidavit is imperfect. I cannot distinguish in my mind what is in the affidavit, and what is matter of fact. I am not able to determine exactly what ground the deposition covers.

Q. When was it that the first suggestion was ever made by any one on the subject of your being appointed as attorney to the excise board? A. It was first made to me by Mr. Weaver, I think, on the occasion of my requesting that French should be appointed to that office.

Q. In the manner as detailed by him on the stand to-day? A. Substantially so.

Q. Did you ever at any time make it a condition of the appointment of either of the excise commissioners, that you should in any way or manner interfere in the appointment of an attorney? A. Never, in any degree, manner or form. When I made the appointment, it was absolutely free from conditions of any nature.

Q. Did you know Reynolds except only casually? A. I had not much acquaintance with him.

Q. How long was it after the suggestion by Mr. Weaver, that if you wanted the appointment it would be different, was it that you made the application for the appointment? A. Nearly a year after.

Q. To whom did you first apply? A. I first applied to Samuel P. Lewis; he had made the same statement as Weaver had substantially, about his willingness to appoint me to that place if I desired to do the business; when it was first stated to me I waived it, and did not express any intention, as I had none at that time of doing the business.

Q. Had there been a change of circumstances which rendered it in your opinion important that you should do the business? A. Yes sir, I thought so.

Q. What was the change of circumstances? A. Changes had occurred in my family which had thrown additional charges upon me.

Q. The death of your brother? A. That was one circumstance.

Q. Leaving a portion of his family depending upon you? A. In a degree he did.

Q. Did you state that to the Commissioners? A. I think I did; I formed a copartnership with Utley, the early part of the previous summer, and part of the basis of it was, that I was to accept the offer, and we were to do the business as a partnership business.

Q. Come down to the time of your giving up that appointment, upon whose solicitation did you give it up? A. Barrows.

Q. His repeated solicitation? A. Yes sir; I would state here that when I accepted that appointment, I did it for the purpose of doing the business, and for no other purpose; I had not the remotest idea of surrendering it to any one, and had only the idea of going on and performing that business; Barrows came to me frequently and urged me very strongly to give up the business, and stated to me several things that were very urgent; he stated that there was domestic distress in his family on account of his losing this business, and other personal matters that I need not mention; he made a very moving representation of the case to me, and it was upon that representation that I was induced to give up the business; from what I had heard about the business at the time, and before, I considered it worth at least fifteen hundred dollars a year; I was entirely convinced I was making a great sacrifice in surrendering the business that the board had given me; I did it on account of his importunity.

Q. From no other motive? A. No, sir.

Q. Had you any idea that you were selling the office when you gave up the appointment? A. I knew I was not.

Q. As a lawyer you knew it? A. Yes, sir.

Q. You regarded yourself as merely giving up a retainer? A. Yes, sir.

Q. Were you aware that it was in violation of any official duty or propriety in accepting that appointment? A. No, sir.

Q. Are you now aware of any? A. No, sir. I will say now, in reference to the point of propriety, with the experience I have had on it, and the construction I see might be put on the circumstance of an officer who had the appointment of other officers accepting a place under them, that it is a precedent not fit to be followed. As to any legal wrong, I did not think there was any, and do not now.

Q. I understand you to say that you had no idea of applying for the attorneyship of the excise board? A. None.

Q. When you took the appointment did you understand that throughout the State county judges were in the habit of acting as attorneys for the board of excise? A. I was so informed. I understood that was the case in Oswego county and in Onondaga county.

Q. Whom did you understand was holding that office in Oswego county? A. Judge Huntingdon, I think.

Q. Were you informed so before you took your appointment? A. Yes, sir, and since.

Q. Who was the judge in Onondaga county holding that office? A. Judge Riegel.

Q. Had you been informed of any others? A. I do not know that I had been informed of Judge Riegel before; I think I was informed of him during the trial at Elmira; I think I have heard of others.

Q. Was it not part of the consideration or condition of your giving up the appointment to Barrows that you should re-appoint Weaver? A. Not at all; that never entered into it in any particular.

Q. Had you before that intended, and expressed your intention, to re-appoint Weaver? A. Yes, sir; he was an old friend of mine, and when he was first appointed I had expressed to him the intention, when the residue of his term had expired, he having been elected to fill a vacancy, that I should re-appoint him, so far as I was concerned, if I was in office at the time and had anything to do with it.

Q. Is there anything else you think of on that subject? A. I only state the additional fact alluded to by another witness that Mr. Barrows expressed no desire to hold the place beyond two years.

Q. That would be the term of Weaver's office? A. It would exceed it by a month or two.

Q. Anything else upon that point? A. Nothing else.

Q. State briefly what there was on the subject of your application for the appointment of French, and in connection with your co-partnership? A. At the time that subject was agitated, I had been informed that several leading citizens of Utica, whose names have been given, were desirous for the appointment of Mr. French

to that office, and I was informed of that by William C. Taylor, I think; by some one, at any rate; and they desired that my influence should be used, that my voice should be given with other citizens for his appointment to that place. I consented to do so. I went and asked the members of the board if they would appoint French. In a conversation which was had between me and Pomeroy, it was proposed that we should form a co-partnership; French, not being in the actual practice of the law, would need aid. It was proposed also that we should do the business and divide as co-partners.

Q. That was all there was of that? A. Yes, sir. They refused to appoint him, and the subject dropped.

Q. Now on the subject of bailing Norton; when you were applied to by Utley to bail Norton, what information did he give you on the subject of the prior proceedings? A. He informed me generally that he had seen Judge Bacon on the subject, and that Judge Bacon had consented that if it met the approbation of the district attorney and of the prosecuting witness, Norton might be let to bail, on condition that he should be mustered into the army.

Q. Did he state to you the prior steps that had been taken? A. I think he did.

Q. What did he tell you had been done? A. That he had seen the district attorney and the prosecuting witness, and that they were willing to do so.

Q. Did he submit that in writing? A. I think not; he told me the fact.

Q. Did he tell you that Judge Bacon had granted an order, and that there was a failure to have him bailed because of the refusal of Poole to muster him in? A. Yes, sir; I knew about that because of Poole's refusal to muster him in; he understood the law to be that a felon, or one charged with felony, could not be mustered into the army. That was one objection; I think that was the real objection, and not on the ground of bounty, in the first place. It may have been both. Thereupon, at the request of Utley, I wrote to Haddock to get from him the order to muster him in without paying the bounty. The county at that time had not issued bonds, and no money could be obtained. That was the reason stated in the letter to Haddock why the bounty could not then be paid. At any rate an order came back from Haddock ordering his muster upon the condition that he should be credited to the county, if Norton was transported to Elmira and duly re-

ported there. After that order came, Norton was a second time brought out of jail, not on my order, but on the original order of Judge Bacon for that purpose.

Q. Your deposition would seem to state contrary to that? A. I was under a misapprehension about it at that time; after he was brought before me for bail, the bond having been drawn for the purpose of being executed before Judge Bacon (but he was out of town), it was brought before me and acknowledged, carrying out, as I supposed, what had been allowed by Judge Bacon. After the thing was over, the deputy sheriff, for some reason of convenience, or fee, perhaps, wanted a formal order drawn for his appearance there at that time; accordingly, I drew such an order after he had been brought there and bailed. Upon the production of that order I of course was led to think—having forgotten those circumstances—that I had really issued an order for his being brought out. My first impression was right that I did not issue such an order. I did not. He was brought out on Judge Bacon's order in both instances. The order that I drew was merely a formal order, made at the request of the sheriff.

Q. All you did was to take the acknowledgment? A. That was all the participation I took in the matter all.

Q. You understood, when you took it, that you were carrying out an arrangement previously entered into between Utley, the district attorney, Judge Bacon and the complainant? A. Yes, sir; I had every conviction that that was so. I had no doubt about it.

Q. Did you understand it to be the practice to admit those charged with felony to bail, and that they should go into the army? A. Yes, sir; I knew it had been done in numerous cases in the courts of oyer and terminer all over the State.

Q. What profit did you make by this proceeding? A. Never a cent.

Q. In any way or manner? A. In no form whatever.

Q. What was your motive in writing to Haddock? Was it other than friendly to Utley? A. None, except to promote his views in carrying the matter out and in following the ordinary practice. We all felt some desire, too, to add one to the credit of the quota.

Q. You participated in that desire? A. Certainly I did.

Q. Did you ever directly or indirectly, in any way or manner, receive from Utley, or any one else, any part of the six hundred

dollars? A. Never in any way. I was never led to expect it. I was never promised it, and I never received it.

Q. Did you know at that time that there was a co-partnership contemplated between Utley and McIntosh? A. I did not know the fact. I have been informed of it since.

Q. Has there not since that time been a co-partnership formed between them? A. Yes, sir.

Q. Your opinion is that they divided the receipts? A. They both told me so.

Q. When you were at Elmira, March 3d, 1865, did you draw a telegram which was signed by Haddock and sent to Fry? A. Yes, sir.

Q. Is that a copy of it [handing a paper to the witness]? A. Yes, sir.

Mr. SHAFER reads in evidence the following telegram:

"ELMIRA, *March 4th*, 1865.

"*Brig. Gen.* FRY, *Provost-Marshal Gen.*, *Washington*, *D. C.*:

"I am convinced that an extensive system of fraudulent enlistments is being carried on in the Twenty-first Congressional District. I think an investigation will disclose that the board of enlistment have given facilities for these operations which have been mostly conducted by one A. Richardson. Certain supervisors are also implicated. I wish Col. Baker to come here, if only for a day. Some arrests should be made immediately. I have proof of a stupendous scheme of bounty jumping, having its center at Utica.

"JOHN A. HADDOCK, *Major*, *&c.*, *&c.*"

Q. You were again at Elmira on the 5th or 6th of March, 1865? A. It must have been about that time.

Q. Were you then informed in substance by Haddock that he had sent to Capt. A. A. Scott a telegram warning him against Richardson? A. I think on the occasion of my being there on the third of March he stated he had prepared such a one, or was about to prepare such a one to send, and which I understood he did subsequently send.

Q. Please state to the Senate whether you took the five thousand dollars mentioned, from Richardson to Haddock, with the view to bribe him to obtain the orders specified in the memorandum of Collins? A. I never did. I never intended to part with

the money at all, to let it pass from my possession into the hands of Haddock.

Q. Did you not at that time believe and know, so far as you could know from belief, that Haddock would not grant any orders to Richardson? A. I did not believe he would grant any order whatever, that was by way of favor.

Q. You had been trying to get letters and telegrams from Richardson, which had been sent by Haddock? A. I will state with brevity what occurred from the third day of March, premising, however, by saying that after Richardson came to me some time in January—the early part, I think—to have me negotiate for certain orders which he desired to get, which I did get subsequently, and which have been read here—the order authorizing Collins to make enlistments, and the order in regard to the portion the recruits might retain—after getting these orders I saw very little of Richardson until the third day of March. The orders which I did obtain were not given to Richardson. I gave them to him after the recruiting season was pretty much over, and when he had no use for them.

Q. Did you not get them from McQuade? A. First I did and gave them to Richardson afterwards. In the meantime Richardson had obtained from the Provost Marshal's office, the same permission to Collins which those orders granted, without those orders being sent.

Q. You mean from the Provost Marshal's office at Utica? A. Yes, sir. Recruits were mustered in at that office without the production of that order for fifty dollars and in many instances for nothing, as I was informed, and have seen from the record. This order, I think, had no influence, because it had not been produced. I had nothing to do with Richardson, in the meantime. He was occasionally in my office to see Collins. He had no concern or business with me, except on a single occasion, when he inquired of me as to the validity of certain bonds that he had taken from some town in the course of his contracts. On the second day of March, I left Utica to go to Elmira. I went there for McIntosh, to see if I could get certain moneys he had deposited there on account of recruits. Finding that Haddock was not disposed to do as I requested him, I dropped the subject at that time. Being there on the third of March, Haddock informed me of certain transactions he had had with Richardson, of which, up to that time, I had no knowledge. He told me that Richardson had given him a horse

and cutter, or a wagon, but that he had granted no facilities on that account, and would not, but would keep to the line of his duty; that Richardson had sent out by Collins two thousand dollars, upon the arrival of which, at first, he refused to receive it; but finally, after some further consideration, he dispatched to Richardson a letter acknowledging its receipt, and asking what should be done with it. He told me he had placed that two thousand dollars in the bank, and that he would not use it, but was waiting the order of Richardson about it. We had conversation then in reference to recruiting. I stated to him that it was a matter of public notoriety at Utica that the worst characters, bounty-jumpers, thieves and others, were passing through that office, and that Richardson seemed to have the control of the office to some extent. He stated to me, then, that the number of deserters was very great — that fifteen had deserted from Auburn in a body, and that others who had been passed through at Utica were by reason of venereal and other diseases unfit for soldiers, and the abuse had become so enormous that some remedy must be applied. He then said to me that he had no doubt that one reason of the boldness of Richardson in putting men through of that stamp was the knowledge that Richardson had got Haddock under his control by reason of the commerce he had had with him.

Q. Was that the first intimation of the horse and cutter and the money that you had with him? A. Yes, sir, the first. I then learned for the first time that Collins, who had been in my office, had been there making visits. Learning all these facts, as I have stated, I pressed upon him the necessity of stopping that state of things. The question was discussed as to the expediency of encountering the hostility of Richardson. He was afraid of Richardson. Upon my advising him, he finally concurred in my proposition. We concluded that the boldest step was the best, and that a telegram should be dispatched at the same time to General Fry informing him of the facts, and asking that detectives should be sent to Utica to examine the whole state of affairs in regard to recruiting there. The result of that consultation was the drawing up of that telegram, part of which I wrote from Haddock's dictation and part from my own suggestions.

Q. What was your motive for writing that telegram or advising it? A. To extricate Haddock from the position he was in, and

the public motive of preventing these operations that were going on in putting that class of men into the army.

Q. Any other motive? A. No other.

Q. Any improper motive? A. None that I knew of as improper.

Q. Go on with your explanation? A. Then Haddock informed me that among other reasons that made him think that Richardson was under the belief that he held control of him was, that he had certain letters, telegrams, and other matters that had passed between them, and I think—I will not be positive about it, but my recollection inclines me to believe that he told me he had already requested them of him, and had been unable to get them. He did not designate the character of the papers. I believe he said then, or subsequently, at Canandaigua, that one of the papers was a paper relating to surplus credits. He told me he wanted to get these papers, and it was then agreed that I should negotiate in order to get them, and that we should both use our best exertions to get them from Richardson.

Q. So that Richardson should not have Haddock in his power? A. Yes, sir. We wanted to get the papers out of his hands before these proceedings instituted by the sending of the telegram should have transpired. We thought if we could prevent a knowledge of these proceedings transpiring we could get the papers and disarm Richardson in his enmity towards Haddock. With the view of negotiating for the papers, I returned, and Haddock told me that Richardson would be at Rochester, probably waiting for me. That was the first I knew of that.

Q. That was on the 4th of March? A. I am not certain. I staid there over Sunday; I went to Rochester; it was Saturday night; that was the only way I could reach Utica. On going there I found Richardson. He made inquiry whether I had seen Haddock or not. I purposely evaded his inquiries to some extent. Finally, in the course of conversation, Richardson made the remark that there was some trouble between him and Haddock. I, in furtherance of my design to negotiate, told him that if there was I might probably effect a compromise. By the way, at that time Haddock had sent by Hoard an order to obtain twenty thousand dollars' worth of bonds that were lodged in the office at Utica. His expressed object to me for so doing was, that he believed that Richardson might otherwise get hold of them, and as a part of his scheme he was proposing to get hold of those bonds and get them into his own possession. When I got back to Utica, to

which place I returned with Hoard, Richardson wanted me to return immediately.

Q. For what purpose? A. For the purpose of obtaining several orders that he wanted.

Q. Did you go back? A. Yes, sir.

Q. Why did you go? A. I went with the view of leading Richardson to suppose that I would interest myself in the matter of getting these orders for him, and that Haddock was open to negotiation also for that purpose.

Q. Did you say anything to him about the papers before you went on the sixth of March to see him? A. I think I did at that time, and he stated they were then at Albany. He then on that occasion, or one near to it, stated that that was the reason for his not delivering them up. I went back to Elmira and had an interview with Haddock.

Q. Did you apply for these orders? A. I merely stated the facts as to what orders he wanted.

Q. Did you apply expecting to get them? A. No, sir; I made no effort to get them.

Q. Did you not know that Haddock would not give them? A. I knew it; I asked him whether such orders could or could not be given; I did not urge him about giving them.

Q. Why? A. Because I did not want him to give them; I said enough that I might say to Richardson that I had requested the orders. It was perfectly understood between Haddock and myself that no order of consequence was to be given at all.

Q. Then you went back to Utica? A. Yes, sir.

Q. It being understood between you and Haddock at Elmira that there was to be a subsequent meeting arranged at Rochester? A. Yes, sir, arranged for the 10th.

Q. You were there on the 10th? A. Yes, sir; Richardson and myself met Haddock there.

Q. Come back now to the time you returned to Utica. When did you reach Utica? A. I think the next day.

Q. When, according to your best recollection, did you first hear about the five thousand dollars from Richardson? A. I think after our return.

Q. What did Richardson say in reference to the five thousand dollars at Utica? A. He said he had seen Haddock, and, having seen him, it was arranged that he was to send him five thousand dollars.

Q. Anything else? A. He stated that Haddock desired the papers he had in his possession.

Q. Did Richardson say anything about the understanding being that he should send him the five thousand dollars and the papers? A. Yes, sir; I think that was talked of in every conversation that we had about it.

Q. Go on and state what occurred at subsequent interviews which led to the reception by you of the five thousand dollars and your desiring the papers and failing to get them? A. I spoke to him several times as to whether he had got the money and papers; I presume I generally asked him whether he was ready to have the business closed up, mentioning the money and papers; I was anxious to get the papers before the transaction between Haddock and Fry should transpire.

Q. Before the detective should come? A. Yes, sir; before he knew that the detective had come on the suggestion of Haddock; because, if he knew that, all hopes would be at an end of getting the papers peaceably. Finally he came and said he had things prepared and had got the money but had not got the papers. He gave some excuse, what it was I forget. As I was desirous of seeing Haddock, and was willing to lead Richardson to suppose that I would negotiate for further orders, I consented to receive the money and go and see Haddock.

Q. What did you say on the subject of the papers? A. I intimated to him that the matter would probably linger for want of the papers.

Q. Did you say in substance that the papers were the main thing? A. Yes, sir, several times; then, before starting, he brought J. D. Collins to my presence and stated about the money being in my hands as a deposit before I left; then he followed me to the cars and said there that I was to bring back the money unless I got the orders.

Q. When you took the money and started for Elmira did you have the least idea of getting any orders whatever? A. No, sir, none.

Q. Did you have the least idea of parting with the money? A. No, sir.

Q. Or of offering it to Haddock, or that he would receive it, or that Haddock would grant the orders? A. No, sir. I should have supposed that by participating in a transaction of that sort, both Had-

dock and myself should have been more completely in Richardson's power than Haddock was before. To put it on no higher motive, I certainly should not have dared to do it.

Q. You returned the money to Richardson? A. Yes, sir. I saw the negotiation had failed, and that it was of no use to make any further effort.

Q. That was on or about the 16th of March? A. I left Utica about the 16th.

Q. When was Richardson arrested? A. He was arrested on the 14th, I think.

Q. It was a sort of friendly arrest? A. No; he was arrested twice. The arrest which occurred on the 14th was made by Major Beadle, who had been sent on by Major Haddock to succeed Crandall; at all events it was made by Beadle on the 14th of March, and he was under arrest when this transaction took place.

Q. When was Haddock arrested? A. I think in April; perhaps the 13th; I am not positive about the date.

Q. Were you aware of the contents of these letters, papers, documents and telegrams, so as to enable you to know whether they were proper or improper, or to know their precise nature? A. I did not know their precise nature until they were produced on the trial. The only things that I knew of, as being improper in the conduct of Haddock, were in regard to the two thousand dollars, and the horse and cutter,—at that time. There were no papers relating to the orders. Haddock said he had given the receipt for the money for his own protection.

Q. Is there anything else you desire to state on the subject of this confederation between Richardson, Haddock and you? A. I have to state in regard to that, that I had no confederation with Haddock whatever in any respect.

Q. Did you ever directly or indirectly receive from anybody a single dollar or farthing in respect to this transaction, except the money given you to pay your expenses as stated? A. Never one penny.

Q. From Haddock or Richardson? A. No, sir.

Q. You never had any understanding that you were to receive any? A. No, sir; except that Richardson was to pay me for services performed, but never out of any contract, in any shape or form; nor did I ever receive a dollar of any soldier's bounty during the course of this war, in any shape or form, remotely or directly.

Q. Did you ever agree directly or indirectly in any way to use or lend your official influence to aid Richardson, Haddock, or anybody else, in improperly enlisting recruits? A. Never, in any case.

Q. On the contrary, was it your desire to prevent any fraudulent enlistments of recruits? A. Yes, sir; all the desire I had about it was one of opposition to it.

Q. When you got those orders from Haddock, did you understand or believe, or do you now understand or believe, that there was anything improper in his giving those orders? A. I did not. I supposed they were orders that it was proper for him in his discretion to make, if he thought fit to do so. I told Haddock on more than one occasion, that I did not want any order from him which would be in violation of his duty as an officer. The first inquiry I made in the matter was in relation to the rules and articles governing him—whether they would allow him to make such an order. I never attempted to get him to make an order conflicting with the regulations which were binding upon him.

Q. Is there anything else you desire to state? A. There may be something in that specification, in regard to that matter of confederating, which I would like to meet fully.

By Mr. H. C. Murphy:

Q. On the occasion of taking that five thousand dollars to Haddock, whom did you consider yourself as acting for. for Richardson or for Haddock? A. I considered myself as acting more for Haddock than anybody else. I was carrying on the theory of negotiation that we had agreed on.

Q. You were not acting under your retainer from Richardson? A. No, sir.

By Mr. Shafer:

Q. Go on with your explanation? A. It is alleged in this charge that there was an interview between Haddock and myself about the time of his appointment. That interview occurred in this way and for this reason: Major Haddock came to Utica on an inspecting tour; he had been lately detailed to that duty—to make a tour of inspection through the western district of the State of New York. In the course of it he came to Utica and inquired what the state of things were there. Several gentlemen, probably six, ten or twelve, came to see him for the purpose of preparing

charges against Joseph P. Richardson, then acting provost marshal of that district. Several charges were made, and upon them Richardson was suspended and removed. We were occupied until 11 or 12 o'clock at night preparing affidavits and charges relating to mal-administration in that office—charges that have never been examined, except so far as that the officer was removed. At that time nothing transpired between Haddock and myself in regard to any matter of recruiting. We contemplated nothing and advised about nothing in regard to recruiting at that time. My interview with him, with the exception of some friendly and personal matters, was wholly relating to the subject of mal-administration of the office in Utica. I would here state that subsequent to the interview of the 3d and 4th of March, Richardson was desirous to have an order to muster in recruits at points other than Utica, and he wanted to get that order. For the purpose of carrying out this idea, and co-operating with Haddock to obtain the papers from Richardson, I sent a telegram asking that such a permission should be given. However, that permission was in the office before. There were orders in the office allowing the officer in Utica to muster in for other points in the western division, but Richardson for some purpose wanted a reiteration of that order, and it was given. It was given because the matter was of no particular consequence.

Q. Have you anything further to state? A. I see that this paper in regard to surplus credit is set out in the charge. I can say in regard to that that I know nothing of the nature of that paper. I heard Richardson say that he received it on the 30th of January, and the surplus credits were matter of notoriety, well known in the county of Oneida since the 12th of January. They were notorious and well known to all the supervisors of that county.

Cross examination by Mr. Sedgwick :

Q. Had you read the Revised Statutes in respect to fees and the compensation of judges before these papers were prepared? A. I don't believe I ever had; I don't believe I had read that chapter.

Q. You don't think you ever read that a judge was not allowed to have a partner practicing in the court in which he was presiding? A. I was aware of that.

Q. Had you read that statute? A. I don't know whether I had examined the statute; I had that as a matter of common impres-

sion and knowledge. Of course I knew that the partner of a judge could not practice in his court.

Q. Did you know that a judge was prohibited from being interested directly or indirectly in the costs of any suit, by statute? A. Yes, sir; I don't know whether I read the statute, but I knew it as a matter of common impression among lawyers.

Q. You knew there was such a statute? A. Yes, sir.

Q. Do you doubt whether you have read it? A. Yes, sir, I did not read it.

Q. Did you know you was prohibited from giving advice in suits that might come before you as a judge? A. Yes, sir.

Q. How did you know that? A. I had that either by reading or by common impression. We know a great many things, of course, as lawyers, without knowing exactly where we derive the knowledge.

Q. You don't know whether you had read that statute. A. I cannot say.

Q. Have'nt you read the statutes generally in regard to the duties of judges and their privileges, and the prohibitions against their taking fees? A. I don't think I ever took up that statute and read it in my life, except when I came to take up this examination, and then upon that point—

Q. You never read the statute in regard to your own duties and rights as judge? A. I don't think I ever did.

Q. Did you not know that by the statutes judges were prohibited from taking a compensation for services generally, of every description, as judges, and for services rendered by them in any suits or proceedings in the courts? A. Certainly, I understood that to be the law.

Q. Did Utley have his office with you? A. Yes, sir.

Q. You were in the same office? A. Yes, sir.

Q. In the same room? A. Yes, sir.

Q. And he prepared a great many of these cases? A. Well, whether you call it a great many or not, I stated what I thought approximated to the number—thirty or forty, probably.

Q. Do you remember now that in each case where they were prepared by him, the party took the affidavit and brought it to you to read, and that Utley never had anything to say about it? A. That is my recollection. I don't say that I am positive about it; but Utley informs me that that is the fact.

Q. Well, do you say this was so of your memory and recollection? A. That is my impression.

Q. I don't ask about your impression, I ask do you remember about these cases that he did not read the affidavit? A. You want to know if I have such a memory that I can exclude every such circumstance of the case?

Q. Yes sir. A. No; I have no such memory as that.

Q. Did you ever reject or decide against an application that was made by him upon an affidavit that he drew? A. I cannot recollect whether I did or not.

Q. Have you any memory of any case where you refused exemption upon an affidavit that he drew? A. No; I cannot recollect any case.

Q. They uniformly passed? A. I don't say they uniformly passed.

Q. Well, so far as you remember, they all went through? A. I cannot bring to memory any case that I rejected; I think it probable there may have been; I know this, if you will allow me to state, that it never produced any influence on my mind.

Q. When did you propose to French to make an arrangement with him about a partnership in this attorney business? A. I don't know that I proposed it to French.

Q. Well, to his friend Taylor? A. Well, it was about the time that the question of his appointment was agitated.

Q. Did Taylor propose to you this arrangement, or did you propose it to him? A. I am unable to say which side it proceeded from, from the fact that French was not an acting attorney; he would need the aid of somebody who could practice.

Q. Did you propose to do the business and divide the profits with him? A. Yes; that was the proposition; that I was to assist in doing the business, indeed to take the lead in it, as I necessarily must, because French was not a practicing attorney.

Q. Where did you live at that time? A. I don't know; I must have been living at Booneville.

Q. It is several miles from Utica? A. Yes, sir; thirty-five miles from Utica; I was just comparing dates; I went to Utica from Booneville in the spring of 1860, and remained about a year and a half; I must have been living, I think, at Booneville, but I have always had an office at Utica.

Q. Did French, as you understand, reject the proposition to go

into this arrangement? A. I never heard of his rejecting anything.

Q. Did Taylor tell you that he would not accept it? A. I think not.

Q. Are you confident on that subject? A. I feel very confident that he never told me so; I never knew any impediment about it, except the refusal of the board to appoint French.

Q. When did your brother die? A. He died, I think, in the spring of 1863; It was the year I was sick; he died about that time.

Q. Where did he reside? A. Salisbury, Herkimer county.

Q. What was his business? A. He was a mechanic.

Q. Did his family continue to live there? A. Yes sir.

Q. When did you form your partnership with Utley? A. In the summer of 1864, I think; the latter part of the summer, if I recollect rightly.

Q. How long did it continue? A. Until about the next summer, or the next spring.

Q. What time? A. I don't recollect the exact time that he left. He went in with Mr. McIntosh in the spring, I think, or early in the summer of 1865.

Q. How many times did you see Barrows in negotiating for the sale of this place to him? A. He came to see me several times; I should think five or six, at my office.

Q. Did he ask you to make him a proposition on what terms you would let him have the place? A. I think not. In the first place I think he made offers soliciting me to give it up.

Q. What was his offer? A. I think it was two hundred dollars.

Q. Did you make any counter-proposition? A. Not at that time. I told him it was no inducement.

Q. What did he next offer you? A. I do not now recollect whether there was any intermediate sum between that and five hundred dollars or not.

Q. Who fixed the price at five hundred dollars, you or him? A. I am not positive in regard to that, but it is my impression that I finally told him for five hundred dollars I would give up the business.

Q. That proposition came from you? A. That is my impression.

Q. Did you go to Barrows' office with the commissioner when

the thing was closed? A. I have no recollection of going there with him. I knew that Weaver was there; but my impression would have been, without hearing Mr. Weaver's statement, that I found him there, sitting by the window, when I went in.

Q. Was that meeting arranged beforehand? A. Not so far as I was concerned.

Q. Did you go there accidentally? A. Not so far as I was concerned with Weaver; I went there at the request of Barrows.

Q. By appointment? A. At the request of Mr. Barrows.

Q. Did Mr. Barrows make any question with you as to the permanency of his position, and what assurance he had of its being permanent? A. I don't recollect anything on that subject, except his stating that he wanted to hold it two years.

Q. Did he say anything about Weaver's reappointment to you? A. I think there was some conversation about that.

Q. Can you state what that was? A. I don't recollect the nature of it distinctly; I think he inquired as to my purpose about reappointing Mr. Weaver.

Q. Did he ask you what assurance he had that he could hold office? A. He didn't start any such point as that.

Q. Didn't he put that distinctly to you? A. Not that I recollect.

Q. Didn't he during the negotiations put it distinctly to you, as to what assurance he was to have as to his continuing in the place? A. My recollection is, that he asked no assurance at all, except the giving up of the paper. That is all that he negotiated for so far as my recollection extends.

Q. All he agreed for with you was that he should pay five hundred dollars for the paper? A. That I should step aside and relinquish the business, and that the paper should be given up.

Q. Had you done anything under your appointment? A. I had not.

Q. How soon after you got it did you tell Barrows? A. Within a few days; the negotiations commenced immediately for the place.

Q. And they were going on all the time until the trade was completed? A. Yes, sir, from time to time.

Q. Didn't you send for Barrows to come and see you about it? A. I have no recollection of doing it.

In the first place didn't you serve a copy of your appointment upon him. A. Yes, sir.

Q. Did you within two or three days send for him? A. In the first place. No, sir.

Q. Did you send any such message to him, sending for him to go and see you in the first place or in the second place, or in any place? A. Well, neither in the first, the second, or in any place to my recollection.

Q. Then you deny you sent any message to him to come and see you? A. I have no idea that I did.

Q. Is your memory clear on that point? A. Of course it is possible for it to have occurred, but I have not the slightest recollection of it. I don't think any such thing occurred. I had no anxiety to dispose of the business.

Q. When he spoke to you at the time the trade was completed about your intention to re-appoint Weaver, what did you tell him? I speak now of the transaction at his office. A. I told him that it had always been my intention to re appoint Mr. Weaver—that had been understood between us always.

Q. Did you tell him that that was understood. Do you desire to change the testimony in respect to that question that you gave before the court martial, in any particular? A. I don't know that I do. I don't recollect the exact phraseology used there.

Q. You stated it then as you recollected it? A. As I then recollected.

Q. Do you remember any better now what was said than you did then? A. Probably not.

Q. What was said about Barrows holding office two years? A. There was some talk there that he would be satisfied to hold it two years.

Q. If he could retain it that time that would be satisfactory? A. Yes; that he could relieve himself of the difficulties that he was in, or something of that sort.

Q. He was willing to pay the money, if he could hold it that time? A. It was not put in that connection.

Q. Was it not stated in the same conversation that what he expected was to hold the office two years? Wasn't that his statement, that he expected to hold the office two years, and would be satisfied with that? A. That was the substance of it—that his application was designed to be for two years.

Q. And that was stated at the time when the bargain was made?

WITNESS: Where do you suppose the bargain was made?

THE COUNSEL: Will you answer my question.

THE WITNESS: I want to know what the place is that you refer to.

THE COUNSEL: I ask you to answer that question—whether it was stated, at the time the bargain was made, that he was to hold office for two years, and that he expected to hold it for that time, and would be satisfied with that? A. That was talked of substantially at the time the bargain was made, if you consider the making of the bargain at the office.

Q. It is no matter where I consider the bargain was made. I wanted you to answer the question, and you have answered it. Did you tell the other commissioners the arrangement you made with Barrows? A. Not that I recollect.

Q. Did you have any conversation with either of them on the subject? A. I think I told Weaver.

Q. Weaver was there, wasn't he, and knew about it? A. He was there when the bargain was completed and the money paid.

Q. Did you tell either of the other commissioners? A. I think I told Lewis.

Q. Did you tell Reynolds? A. I did not.

Q. When did you tell Lewis? A. I am not certain when or where, but I have an impression that I told him something about it.

Q. Told him something about it—did you tell him what the bargain was? A. I am not sure that I did.

Q. Do you remember whether you did or not? A. No; I don't recollect telling that.

Q. What did you tell him? A. That I had declined to do the business, or something of that sort.

Q. You remember, I suppose, telling him that? A. Well, I don't distinctly, but I suppose I made some such remark on the subject. What it was I don't recollect.

Q. Where was it? A. I don't recollect.

Q. When was it? A. That I don't know.

Q. You can not tell what it was at all; no recollection of what it was? A. I suppose I made some communication of the fact that I had declined the business.

Q. Did you make a communication to him to the effect that an arrangement had been made with Barrows so that he should have the appointment? A. No, sir; I don't think I told that to any commissioner.

Q. Did you conceal that?

The WITNESS: Conceal it?

COUNSEL: Yes. A. I made no effort to conceal it.

Q. Did you tell Lewis what you got for the office? A. I think not. I think I didn't tell him.

Q. Did you and Utley have any connection in any attempt to contract for recruiting in Lewis county or in Jefferson county? A. No.

Q. Did you make any effort to make contracts in those counties? A. At the request of a party I went out to Jefferson county where I was acquainted, and the other party was not for the purpose of introducing him to parties there who might desire to fill quotas, or get quotas filled.

Q. Who was the man? A. Martin F. Hamilton.

Q. Where did he live? A. Oneida county.

Q. Was he engaged in the recruiting business? A. Somewhat.

Q. Where? A. Utica, or thereabouts.

Q. Any other place? A. No; I think he filled quotas nowhere else. He put in recruits nowhere else, that I know of.

Q. Where did you take him to, or, where did he take you to? A. We went to Watertown.

Q. Who did you see there? A. A good many persons.

Q. You say you were acquainted there? A. Yes, sir.

Q. Did you introduce him? A. Yes, sir.

Q. As a proper person to fill quotas? A. No, sir; he made known his own business.

Q. You went with him to promote his business through your acquaintance? A. Certainly.

Q. Did you take him to Lewis county? A. No, sir.

Q. How long did you stay at Jefferson with him? A. A couple of days; I guess not exceeding three.

Q. Did you go to Lewis county on the same business? A. No, sir; I never stopped in Lewis county, that I know of, on the subject of recruiting. I attended war meetings for the purpose of promoting recruiting, a good deal, but never in any other capacity.

Q. Did you make any proposition to furnish recruits yourself, or on your account? A. While I was at Watertown, hearing that quotas were desired to be filled there, I did have some talk with parties about it, and telegraphed, I think, to Richardson, at Utica, to learn upon what terms we could fill them.

Q. When was that? A. In the spring of 1865, or the last part of the winter, I don't recollect the date. It was on this occasion when I went out with Hamilton.

Q. How late was that in the winter? A. I don't recollect.

Q. As near as you can? A. It was in time of a very deep snow; but I have no means of knowing without looking somewhere else.

Q. Was that after you had been at Elmira for Richardson? A. Yes, subsequent to that.

Q. How long after that? A. I cannot tell how long after.

Q. Can you tell the month? A. I cannot.

Q. Was it during the month of January? A. I cannot say.

Q. Was it after the 3d of March? A. It must have been before the 3d of March.

Q. Why do you say it was before the 3d? A. It must have been before the 3d of March.

Q. Why do you say it was before the 3d? A. I recollect the state of the weather; it was winter.

Q. Did you talk to Richardson about it before going? A. No, sir.

Q. Did you after coming back? A. I think so; he made no answer to my telegraph, and I understood, after coming back, that he could not put in any men in Jefferson county.

Q. Why not? Because he wanted to do business in Utica, and could not supply men.

Q. The proposition failed because he could not do the business in Jefferson? A. It failed, for the first reason, because I did not make any contract to start with: and secondly, he had no men to put in there.

Q. You think you were only there three days? A. Yes, sir.

Q. Did Hamilton pay you for going? A. No, sir; I am out of my expenses going there; I never was paid my expenses.

Q. Did you go for Mr. Hamilton's purpose, or your own? A. I went at his express request.

Q. How long had Hamilton lived at Utica? A. He lived there for a great many years; he was justice of the sessions.

Q. Was he engaged pretty extensively in bounty brokerage? A. Not very extensively; he put in a few men.

Q. Did you hear of any business on his part in Jefferson? A. Yes, sir.

Q. He tried to make bargains there? A. He did.

Q. And you tried? A. Not much; I made no positive effort to make a contract; it came up casually, and was abandoned, and never renewed.

Q. How often did you see Mr. Richardson during that period?

A. Not very often; he used to come into the office to see Collins; from the 9th or 10th of January; I had scarcely any intercourse with him.

Q. Was he not in your office almost every day? A. I think not.

Q. Was he not there three times a week? A. Perhaps he was; but uniformly, when he came in, his business was with Collins.

Q. You never spoke to him? A. I might have saluted him; I had no conversation with him on his business.

Q. Where did you talk with him on the Jefferson business? A. I do not know where it was; it was only casually mentioned, after my return.

Q. How many letters did you write to Haddock in respect to Norton being bailed? A. Two, I think.

Q. Did he refuse on the first application? A. I think it was refused the first time.

Q. You wrote to him a second time? A. Yes, explaining the circumstances more fully; and thereupon the order was made.

Q. Did you urge it pretty strongly? A. Yes, pretty decidedly in the second letter.

Q. Did you tell him Utley was your partner? A. I think so; I think he was mentioned in that character. The letter will speak for itself.

Q. Have you got that letter? A. It is in those proceedings, I think; I do not know whether he was spoken of in that character or not.

Q. In answer to the second letter you got the permission? A. Yes, sir.

Q. To have the whole bounty paid to Utley? A. The point was to have Norton permitted to be mustered and credited upon the quota of Oneida, without payment to him of the bounty.

Q. You understood that Utley was to have the whole of it? A. Utley, or some party, was to have it, I suppose.

Q. Was the letter a request that Norton might be mustered in and the whole bounty paid to some one else, without payment to Norton of any of the bounty? A. I do not suppose the letter contained any proposition about allowing him to be mustered in on payment of the bounty to others; I do not think that was the phraseology; the object of the letter was to remove the necessity of raising $600 to pay this recruit, as the order required; it was to get rid of that difficulty.

Q. That was the objection made by the recruiting officer? A. I do not know; I was not there.

Q. Have you not stated that that was told you to be the difficulty in respect to the matter? A. I heard that that was so.

Q. Have you not stated in your examination that that was the difficulty you wanted removed? A. Yes; I say now that was the difficulty.

Q. And that was the point you wrote on? A. One of the points.

Q. And you were informed that your partner was to be the recipient of the money? A. Yes, sir.

Q. And you urged the matter upon Haddock and got a favorable answer? A. Do you mean urged that Utley was to be the recipient of the money? I did not.

Q. Did you write to him for Utley, and at his request? A. Yes, sir.

Q. And you wrote to the Provost Marshal that Utley was to be the bail? A. I think so; when I write a letter I have very little memory about its precise terms afterwards.

Q. You wrote at Utley's request that Norton was to be bailed, and Utley was to be the bail. Did you write that he was to receive the bounty? A. That Utley was to receive the bounty? On my recollection, I think not; I think I did not put that in the letter.

Q. Are you pretty clear on that? A. No, I am not very clear.

Q. You say you urged Haddock pretty strongly. What did you urge upon Haddock? A. I cannot undertake to say. I think I stated, among other things, that the bonds of the county had not been issued, and the money could not be raised.

Q. Did you tell him Utley would take the bond? A. I think not.

Q. Did he take the bond? A. I do not know whether he did or not.

Q. Did you hear it said so? A. I think I did hear he took the bond.

Q. And got it discounted? A. I do not think I ever did hear that.

Q. You say that you merely took an acknowledgment of the bond. What do you mean? A. I mean that I supposed the question of Norton being bailed had been expressly settled, and that I

was carrying out the purpose of Judge Bacon by taking his acknowledgment of the bail before me.

Q. Did you let him to bail? A. In legal effect, I did.

Q. What do you mean by saying you only took the acknowledgment? A. That was the only tangible act I did: in legal effect, I bailed him.

Q. And afterwards you made an order? A. I wrote an order.

Q. After that thing had been done? A. Yes, sir.

Q. The same day? A. Directly after, I think; I had forgotten the fact, but Utley swears it is so.

Q. You are testifying now to Utley's recollection, and not your own. A. That is what refreshed my recollection about it.

Q. You remembered before that you made the order? A. When the order was produced, I supposed, looking at the face of it, that the order was made by me, and that he was brought out of jail upon it; but I afterwards learned that I was mistaken, both on my recollection and on information from others.

Q. Utley's swearing changed your memory? A. The fact that I went to the jail and found Judge Bacon's order there confirmed my mind; I could see how he had been brought out without my order.

Q. Did you state on your direct examination that you wrote to promote Utley's views in the matter—that that was the object of your writing? A. Yes, sir.

Q. The men who had been bailed previously and had gone into the army had received their bounty like other people? A. I do not know whether they had or not.

Q. Did you ever hear anything to the contrary? A. Yes, I heard of a good many cases where they were bailed, and the money went to others.

Q. Was that before this? A. I think before this.

Q. Was it not the refusal of the provost marshal to depart from the custom of having the recruit paid that made your letter to Haddock necessary? Had you not understood, up to this time, that provost marshals had not received any of these men as soldiers without payment to them, as in other cases? A. I think not. That order had been recently promulgated, to my recollection.

Q. Was there a time before that when recruits did not receive their bounty—when it was not the order at the provost marshal's office that the recruit should receive the bounty? A. I think so;

I think the order of General Dix upon that subject was initiative—undertaking to restrict the operations of bounty brokers in that respect.

Q. How long before? A. No great time before that.

Q. Was it not more than two years before? A. I do not recollect the date; but the substance of that order was reiterated in the order of Major Haddock.

Q. Did you ever hear, before this transaction, of a person being bailed by a judge where he did not receive his bounty precisely as other enlisted men? A. I think I had; I heard of a couple of boys, if I recollect right, who were mustered into the army, where the provost marshal and other parties got the whole of their bounty.

Q. Did they get any more than bounty brokers were entitled to get? A. I do not know whether it was a proper or improper share, but they got a considerable share.

Q. I want you to answer my question; can you state any case where the rule of the office was waived so as to allow anybody but the soldier to take his proper proportion of the bounty where they had been bailed and enlisted? A. That I cannot answer. I should want to know what standard you think is a proper proportion.

Q. I mean according to the rule prevailing at the office at the time? A. Before this order made by Haddock, I understand there was no rule on the subject establishing any proportion whatever.

Q. When was the order made by Haddock? A. The one read here to-day I mean.

Q. Do you mean the one of the 10th of January? A. I think that is the date.

Q. Do you mean to swear that up to that time there was no rule at the provost marshal's office at Utica requiring any portion of the soldier's bounty to be sent forward with him? A. I do not know whether there was any rule or not.

Q. Do you mean to swear that you went to get an order from Haddock on that principle when before that order was made the thing was all loose, and the soldier was at liberty to do what he pleased with any portion of his bounty money? A. The order was probably established earlier than that. I do not undertake to recollect when it was.

Q. Do you mean to say that it was Haddock's order that first

established that rule? A. I do not say. I think the initiative of these orders was by Gen. Dix. That is my impression.

Q. You do not mean to swear that Haddock established it? A. No, sir.

Q. Can you now remember a case where the rule of retaining a proper proportion of the soldier's bounty, and not giving it to him was departed from, in case of a man bailed? A. I do not know the circumstances of any case of that sort.

Q. You do not know of any such case? A. No, sir.

Q. Nor remember any such case? A. No, sir.

Q. You had no information of any such case? A. Not that I recollect of. I was not in the recruiting business.

Q. Did you ever hear before this case of Utley's of any soldiers being bailed by a judge, and the partner of the judge receiving the whole bounty? A. Not that I know of, either the whole or a part of it.

Q. You never heard of any such case before, I suppose? A. Do you want an answer to that?

Q. Yes, I want an answer. A. No, I have not.

Q. You did not know at this time that Utley contemplated going into partnership with somebody else at the time you wrote that letter? A. I was not informed of that.

Q. How long afterwards did you find it out? A. Sometime after.

Q. Have you and Utley settled your partnership affairs? A. No, sir; no formal settlement.

Q. They remain unsettled? A. Yes, sir.

Q. Did Richardson know you were going to Elmira on the 3d of March? A. He did not that I know of; I never gave him any knowledge of it.

Q. You had previous to the 3d on his retainer obtained some orders? A. I had obtained the orders referred to, that in respect to Collins, that in respect to ——.

Q. Had you applied for any further orders on his behalf? A. Up to the 3d of March do you mean?

Q. Yes. A. I sent by telegraph to inquire whether men could be mustered at Utica for Lewis county, I think, at the suggestion of Richardson, and an answer came back in the negative, and that ended it.

Q. Had you, when you went there for him on the 9th and 10th

of January, directions from him (you then acting as his attorney) to apply for other orders besides those you obtained? A. No.

Q. You got, then, all he asked for at that time? A. None that I recollect of now; I think that was all.

Q. You got all that he wanted so far as you recollect? A. That is my recollection of it. There was nothing else specifically talked of.

Q. You knew, then, that Richardson and Haddock had seen each other? A. When I got there, do you mean?

Q. Yes, sir. A. Yes, sir.

Q. Were you so informed, or did you know that they had had correspondence, or had seen each other afterwards, before the 3d of March? A. I did not.

Q. On the 3d of March you were informed of it? A. Yes, sir, I was informed of it to some extent. There had been operations between them I had not known of before.

Q. What day do you say the 3d of March was? A. I am not certain, but I think the 3d of March was on Sunday. It may have been that Saturday was the 3d and Sunday the 4th.

Q. That was in 1865? A. Yes, sir.

Q. Neither of them was Sunday. A. It may be I am mistaken.

Q. You went there on the 2d of March and was there on the 3d? A. I was there about those days.

Q. How long did you stay there? A. I do not recollect exactly; perhaps two or three days.

Q. On that occasion Haddock informed you of anticipated difficulties with Richardson, did he? A. Yes, sir.

Q. He told you that he had received a horse and cutter from him? A. Yes.

Q. He told you that he had received $2,000? A. He told me of the transactions I have stated. He claimed that he had not really received it.

Q. He told you that he had taken $2,000 and had it yet in bank? A. Yes, sir.

Q. And that he had for his protection signed a receipt for it? A. Yes, sir.

Q. Did you see that receipt? A. No, sir, I did not.

Q. Did he show you a copy? A. No, sir.

Q. Did he tell you what it was? A. Only in a general way.

Q. In a general way, what did he say it was? A. That he had

sent back a paper to the effect that it came to his hands and was subject to the order of Richardson.

Q. He was advising with you as his friend and counsel? A. We talked together as friends; I do not know that any relation of counsel existed.

Q. Did you advise him what to do? A. I advised some things.

Q. Among other things you advised the sending of the telegraph? A. I did; we agreed upon the terms of it after talking it over.

Q. Did you agree that that should not be made known to Richardson, but should be concealed from him? A. I do not know whether we agreed to it, but that would be pretty strongly implied; I don't know whether we expressed it in words.

Q. That was understood perfectly between you that you and he were to operate together against Richardson, without his being advised of it? A. I did not intend to inform Richardson of it myself.

Q. You say you prepared that telegraph, did you? A. I did not say that I prepared it; I said I wrote; a part was my suggestion and a part was his.

Q. Whose suggestion was it that Baker, the detective, should go to Elmira? A. Is that part of it?

Q. Don't you remember what the telegram was? A. I cannot recollect its terms without looking at it.

Q. Here it is [producing a printed copy of the telegram to the witness]; will you read that part of it? A. [Reading.] "I wish Colonel Baker to come here, if only for a day." It is dated Elmira; I suppose that that was a suggestion of Haddock.

Q. That was Haddock's plan? A. I suppose so.

Q. He wanted to give Baker instructions. Did you talk about Baker being a good man to come here and receive instructions for the prosecution of this plan to get the papers back from Richardson? A. No, sir; Baker's character and capacity was not discussed at all.

Q. You knew who Baker was, I suppose? A. I had understood that he was a detective officer of the government specially detailed to duties of that sort.

Q. Do you know whether Baker did come there? A. I do not.

Q. Did Haddock ever tell you? A. I do not recollect that he did.

Q. Didn't you hear of the fact that Baker was there—you were there again in a day or two, two or three times—didn't you hear of his being there? A. I have no recollection now of hearing it.

Q. Was that telegram advised for the purpose of compelling Richardson to give up those papers? A. No, sir.

Q. What was its object? A. The first object was what I have stated, that the practice of putting men through the office at Utica, who were unfit and improper, had become so injurious that he felt obliged to have a check put upon it.

Q. This consultation between Haddock and you was entirely a matter for the public good, and not for the purpose of getting these papers? A. Not entirely for the public good; it was for the purpose of getting rid of the supposed influence of this Richardson over him, and aid him to get out of his hands.

Q. Was it for the public good that you were engaged to go to Rochester with Hoard, expecting to meet Richardson there? A. I had not engaged to go to Rochester with anybody.

Q. What took you there? A. Because I was starting on Saturday night, and had to go that way in order to get back, as I understood it. If I came down by the lake, there was no steamer to go up to Geneva, it being Saturday night. I had, therefore, to go round by Rochester.

Q. Do you not often go by the way of Binghamton? A. Not often.

Q. You knew that way of getting back? A. Yes, sir.

Q. Now, do you mean to have this Senate understand that you went to Rochester because it was a convenient way of getting home, and that was the only purpose of your going there? A. I say I went by the way of Rochester.

Q. Answer that question. Do you mean to be understood that you went by the way of Rochester because it was a convenient way of going home, and that was your only purpose? A. I do not say it was my only purpose.

Q. What other purpose had you? A. I think that was about the only thing that induced me to go that way. I may possibly have had some idea or purpose to see Richardson and commence the negotiation with him.

Q. What negotiation? A. To commence getting the papers.

Q. Who first told you that Richardson would be at Rochester? A. Haddock first told me that.

Q. Where did he tell you? A. At Elmira.

Q. Before or after you wrote that telegram? A. In the course of the same day, I suppose.

Q. What kept you at Elmira until the fourth—what did you stay there for until Saturday night? A. I left on Saturday night.

Q. What made you stay until then? A. I do not recollect how much of a period of time it was.

Q. You say you went for McIntosh? A. Yes, sir.

Q. How long did it take you to make the proposition to Haddock for McIntosh, and get an answer? A. It did not take long.

Q. Five minutes? A. I presume it might be disposed of in five minutes, but we talked about it longer than that.

Q. You went to Rochester, and how long did you stay there? A. We staid there over Sunday—yes, I think we left on the Sunday night train.

Q. For where? A. For Auburn.

Q. Do you know what Hoard went down to Elmira for? A. To Utica you mean?

Q. I mean to Rochester. A. He was on his way back.

Q. He had an order for these bonds that have been spoken of? A. I understand so.

Q. Were you consulted at all about giving that order? A. No, sir; I think that had been determined on beforehand, though perhaps it was talked about—I am not sure how that was. I had understood that he had determined upon making such an order.

Q. That he had determined to get possession of those bonds himself? A. Yes, sir.

Q. Was it talked of what the object of that was, between you and Haddock? A. Yes, sir; I think the object was said to be to prevent their getting into Richardson's hands.

Q. Was it not stated in a little different form from that—was it not stated that being in possession of those bonds, he could persuade Richardson a little better to give up those telegrams and letters? A. That may have entered into it.

Q. Didn't you talk it up in that way? A. I don't recollect that we discussed it in that light.

Q. Did you not take that view of it as counsel, for the sake of your friend to get the $20,000 of Richardson's bonds, and by doing that you could persuade him to give up the telegrams and papers? A. I do not think that was discussed.

Q. You did not say anything about that? A. I think not.

Q. Nothing was said about the object of getting these bonds

between you and Haddock during the two or three days you were at Elmira—do you mean to say that? A. I think not; I think nothing proceeded from me on that subject, and I do not recollect anything that Haddock said about it, except the general purpose I have already stated.

Q. Did you say anything to Richardson about that order? A. I did not.

Q. Did you say anything to Richardson about these bonds at any time? A. Yes, we had a conversation about them, I think, at one time.

Q. When was that? A. That must have been at a late period of the transaction.

Q. Did Hoard say anything about this order to Richardson in your presence? A. Not in my presence.

Q. Was Richardson in any way advised that he had his order while you were at Rochester? A. Not that I know of.

Q. Did you have any conversation with Richardson at Rochester about the transaction? A. No.

Q. Nothing about any part of this business? A. I may have had about a part of the business.

Q. Did you talk with Richardson at Rochester about the matter between you and Haddock? A. To some extent.

Q. What was the conversation? A. There was talk there about Haddock's being irritated at him, supposing there was some difficulty. He seemed to attribute to that the cause of his not coming there. On the next day, I think, he stated further that he supposed one reason that Haddock was mad, to use his expression, was on account of some men who had been furloughed and not returned; that Richardson had promised they should be returned, and instead of returning they had deserted; that there was some ground of difficulty about that.

Q. Did you open this subject of the papers, and of your wanting them from him there? A. I do not recollect whether I asked him for the papers there or not.

Q. Did you say anthing about it to him there—about his giving them up? A. My impression would be that I did suggest to him that he should give up those papers, but I have not a clear recollection about that.

Q. Did you assign any reason for asking him to give them up? A. I am no telear that I made the proposition, but I have an impression that I did.

Q. What did he say? what did he require? A. He made no decisive reply either one way or the other, that he would or would not.

Q. When did you see him after you left Rochester? A. I got back on Monday; perhaps not until on Tuesday. I think he and Collins saw me on my arrival, after getting back.

Q. He and Collins? A. Yes, sir, for the purpose of having me go back.

Q. Was that a new retainer? were you again employed by Richardson, or did you consider yourself in the same service as before? A. I did not consider it in the light of a retainer.

Q. You had been employed before, and you did not suppose this was a new retainer? A. I had been employed in the way I stated.

Q. Did he make a new bargain with you, and employ you to go back to Elmira? A. No, I think not. I think there was nothing said that there was to be any new employment.

Q. But he asked you to go back? A. Yes, sir.

Q. For what? A. For the purpose of obtaining certain papers which he gave me a specification of.

Q. In writing? A. Yes, sir, I was furnished with a written memorandum.

Q. What did you do with it afterwards? A. I kept it for some time; I do not know where it is now.

Q. Have you looked for it? A. Not recently.

Q. Have you looked for it since that time? A. Yes, sir.

Q. Were you able to find it? A. I did not.

Q. Did you state on your examination before the court martial that the statement of the contents of that memorandum made by Collins was correct? A. I seem to be so reported; I do not recollect now, whether I did or not.

Q. You cannot remember what you swore to? A. On that point, no.

Q. Was it a part of your object in going there to see whether he would give an order to give up the bonds which were lodged with Crandall? A. That was one of the things which Richardson wanted.

Q. One of the things he employed you to go back there for? A. Yes, sir.

Q. You knew that Hoard had the order, did you not? A. Certainly, I did.

Q. Did you say anything to your client about it? A. I did not consider him my client.

Q. Although you were employed to go on his business, you did not consider him your client! He considered you his attorney, did he not? A. No, I do not think he did.

Q. You went off for him at his request and yet you did not consider him your client, nor he consider you his attorney? A. I did not consider that we were in the technical relation of attorney and client.

Q. Was it a part of your business to get an order from Capt. Crandall, to allow recruits to receive their money at the draft rendezvous, and not get anything at the place of muster?—was that one of the purposes? A. I think so.

Q. Did you apply for that? A. No; I only applied for it in the way I have stated. I did not urge any such thing, and I did not expect to get it.

Q. When did you return? A. From my journey on the 6th?

Q. Yes. A. I must have come back on the 6th. I was at Rochester on the 10th.

Q. Was it a part of that memorandum that you were to apply to Haddock for leave to have Capt. Crandall muster men at Utica for other parts of the western division? A. I do not know whether that was contained in the list or not, but that was telegraphed.

Q. Was that a part of that memorandum? A. I do not recollect whether it was or not.

Q. What did you do there at Elmira on that occasion, when you went there on Richardson's employment? A. I did nothing.

Q. Did you tell Haddock what transpired at Rochester? A. Yes; I think so.

Q. You told him about the interview? A. Yes, sir.

Q. Did you tell him what Richardson said to you about him? A. I presume I did; I do not recollect.

Q. Have you no memory as to what transpired then, where you went there on his business? A. Not much memory.

Q. Is your memory infirm? A. As to events it is rather imperfect.

Q. Did you arrange for another meeting at Rochester? A. At that time do you mean?

Q. Yes. A. I do not know that it was at Rochester; but a future meeting was arranged.

Q. You came home pretty soon? A. I must have done so; I

do not recollect the date, but I came back before a great while, of course.

Q. Did you see Richardson when you came back? A. On my coming back from Elmira and before the 10th, do you mean?

Q. Yes, sir. A. I saw him, of course; I went to Rochester with him.

Q. On your return? A. Yes, sir.

Q. Did you tell him what you had done at Elmira? A. I told him in substance that I had failed to get any order of him.

Q. Did you then telegraph immediately back for an order? A. In regard to allowing the officer at Utica to muster men?

Q. Yes, sir. A. Yes, sir.

Q. And you got an answer, granting it, did you not? A. One came; I do not know whether it came to me or Crandall, on that subject.

Q. Is that the telegram you sent? [Producing a printed copy.] A. That I think is it.

Q. Read it. A. [Reading.] "Utica, March 9, 1865. Major Jno. A. Haddock: Send telegram to provost marshal allowing A. R. to muster men for any place in western division; and pay recruits at mustering office, as State law may allow. Meet me at Osborn House, Rochester, Friday night. I will bring documents all right. G. W. Smith."

Q. What documents did that refer to? A. It referred to those papers.

Q. Which Richardson had? A. Yes, sir, and which I expected to get from him.

Q. Did you send the next dispatch. [Producing a printed copy.] A. I suppose I did.

Q. Read it? A. [Reading.] "Rome, March 13, 1865. Major Jno. A. Haddock, Elmira: Everything is right. Business prevents my coming to-day. Will be on to-morrow. Send instructions to new marshal to muster same as before. Send answer by this line to Rome. G. W. Smith." That was given into the hands of Collins for Richardson by me, I think.

Q. Did you get a reply to that, the next day, saying he had given the order? A. I do not know whether I did. Is it there?

Q. Yes. A. [After looking at the printed copy.] It seems so.

Q. After this interview, on the 3d of March, you applied for and obtained those orders in Richardson's favor from Haddock?

A. Yes, sir; or, rather, what was obtained were general orders on the subject applicable to that officer and to others.

Q. They were obtained for him? A. On his suggestion.

Q. And on his employment? A. Yes, sir.

Q. Why did you request an answer to be sent to Rome? A. That was not my request; it was Richardson's. That is what he wanted.

Q. What was it done for? A. I do not know.

Q. Have you any idea? A. I suppose it was probably to prevent it being known at the office in Utica.

Q. It was done for concealment? A. I suppose that was his design.

Q. Who was the new marshal referred to? A. What is the date of that?

Q. March 14th. A. It must have been Beadle.

Q. Did you authorize the sending of the dispatch on the 10th of March, which is given here, and signed "R. & S.?" A. I suppose so; it was to arrange the meeting I talked of [reads] "March 10, 1865. John A. Haddock, Elmira: Meet us at Osborn House, Rochester, to-night, without fail. R. & S."

Q. "R." means Richardson? A. Yes.

Q. And "S." means Smith? A. Yes.

Q. Was Richardson arrested about this time? A. I think he was arrested on the 14th, by Beadle's orders.

Q. Did he come to you as his counsel in the matter? A. No, sir, he did not. He went to Mr. Conkling.

Q. Did he not come to you and request you to act for him when he was arrested? A. Not that I recollect.

Q. Do you deny that you sent at his request to Haddock by telegraph, to know if it was by Haddock's order that he was arrested? A. Certainly not.

Q. That was at his employment and request? A. He did not come to me as his counsel; he wanted to ascertain the fact, I do not know whether it was his or my suggestion.

Q. Had you given him any intimation up to the time of his arrest, that you were not going to act for him any longer? A. No, I had not given him any intimation, but he did not come to me. He was arrested when I was away from the city.

Q. Had you not been employed by him to go to Elmira, and to go here and there all the time up to, and subsequent to his arrest? A. I had been employed just as I stated.

Q. Do you mean to say that your going about the country for him, to Elmira back and forth and to Rochester, was not an employment by him as counsel? A. You may characterize it as you please.

Q. You characterize it. Were you employed by him as attorney or counsel? A. I was employed by him as agent. I don't think the technical relation of attorney and client existed at all.

Q. When did you first tell Richardson that you were employed by Haddock and not by him?—when did you advise him that your relations with him were changed? A. I do not know that I ever advised him.

Q. He supposed, up to the end of the business, that you were acting for him? A. I suppose he expected I was acting for him in the things I did.

Q. You intended him to suppose you were acting for him all the time? A. I did not give him advice. I was employed by him to do certain specific things. In those I succeeded or failed. I never gave him advice.

Q. Did you not advise him to give up the papers? A. I requested him.

Q. And that, if he did it, it would promote his objects in getting the orders? A. Yes, sir.

Q. You told him that and gave him that reason for it. Did you tell Haddock during this time, from time to time when you saw him, all that passed between you and Richardson? A. No; I do not think I told him all that passed. I told him some things.

Q. Did you tell him all that you remembered of what you thought it would be for his interest to know? A. I do not know whether I did or not. It would be difficult to say whether I told him all.

Q. Did you tell him substantially all that passed between you and Richardson on the subject of business? A. I don't know that I did. I told him what I thought proper to tell.

Q. Do you mean to say that, when advising with Haddock, you did not tell him everything which occurred between you and Richardson, and which you thought would be to his advantage? A. I intended to substantially.

Q. On the other hand, did you tell Richardson anything that occurred between you and Haddock which you thought would be to his advantage? A. I kept Haddock's plans from his knowledge.

Q. Had Richardson any suspicion that you were acting on behalf

of Haddock and against him? A. I cannot say what his suspicions were, but I supposed at times he had. I suppose that in the latter part of the transactions he perfectly understood.

Q. He did suspect you of being treacherous? A. Of being hostile.

Q. Did he suspect you of betraying his counsels to Haddock? A. I did not have any counsels to betray.

Q. He told you his plans and what he wanted you to do? A. He told me what orders he wanted, and those of course I disclosed to Haddock.

Q. Did you say to Richardson that if he sent the papers with the money you would get the orders for him? A. I held out that encouragement.

Q. Did you not say so in terms that if he sent the papers with the money he would get the orders? A. Probably I did. I cannot say I said so in terms, but I probably said so in substance.

Q. Was that true? A. That he would get the orders, do you mean?

Q. Yes. A. I did not think he would get them.

Q. When you told him so you did not believe what you said to him? A. It was diplomatic, certainly.

Q. It was something more than "diplomatic"? A. You may characterize it if you please.

Q. It was a fact that when you told him he would get the orders if he sent a bribe large enough and the papers, you did not believe it? A. I did not believe he would get them, and I did not mean he should either.

Q. So you meant to betray him and lie to him at the same time? A. You may characterize it as you please.

Q. Did not you mean exactly that—to betray him and tell a lie at the same time? A. I did not mean to betray him. I did not consider he had anything to betray. I considered him a public enemy and an enemy of Haddock's, and—

Q. When did your alliance with him—

Mr. SHAFER: Let him finish his answer.

The Witness: And that every means ought to be used in a proper way to foil his scheme.

Q. When did your alliance with him cease? A. I never had an alliance with him.

Q. Were you compelled to telegraph him from Jefferson county about recruits up there, and to go and try to obtain orders for

him? A. I telegraphed to him for information. If sending a telegram to a man makes him an ally, it is a new idea.

MR. SHAFER: Confine yourself to answer the questions.

The WITNESS: The counsel is getting excited.

Q. On the 4th of March, when you were at Elmira, did Haddock tell you what the telegrams were that he wanted? A. He did not give me their contents.

Q. Did he give you any means by which to identify them? A. No.

Q. Did you go on and negotiate about papers which you did not know about? A. Certainly, I did. I expected to get such papers as Richardson would give answering that request. Haddock I supposed would know.

Q. When your friend Haddock told you he had papers in Richardson's hands which he wanted to get away from him, did you not ask him what they were? A. I think I did.

Q. Did he decline to tell you? A. He only told me in a general way that they were letters and telegrams; and subsequently at Canandaigua, he told me that one paper was a list of credits. At Elmira, he did not even give me that specification but alluded to them by general description.

Q. Did he say that they were papers which would injure him in Richardson's hands? A. I recollect this about it: he said that Richardson, he thought, would hold them for the purpose of riding over him.

Q. Did he say that they were papers which he thought would injure him? A. I don't recollect whether he said that or not.

Q. Did he tell you that they were papers which were entirely innocent? A. No, sir; I understood from his statement that his desire was to get them, that they were papers which compromised him more or less; how much I did not know.

Q. That was your understanding of the contents of the papers? A. Yes, sir.

Q. And the reason why he desired to get them?. A. Yes, sir.

Q. Did you know at that time that Haddock had been threatened in any way, that there were attempts made to injure his standing? A. I think he told me about an interview he had with Collins, in which they had a heated talk, and in which he had said to Collins that Richardson might fire his biggest gun and he would fire his, showing that there was a sort of quasi warfare between them at that time.

Q. You understood that they had come to that part where they were threatening each other? A. Where a rupture was probable.

Q. Do you understand that any of these letters to Richardson were letters with his signature? A. He did not tell me that, but I learned afterwards that such was the case. He did not tell me that there was any letter with his signature.

Q. You learned that afterwards? A. That came out on the trial.

Q. Did you not learn it before? A. I think not.

Q. In all your efforts to get these papers you never had any description of them, except the general description that they were papers which might compromise him? A. That is all, that they were letters, telegrams, &c.

Q. Is this paper in Haddock's hand writing? [Referring to circular of January 7, 1865.] A. No, sir; but the signature is his.

Q. Is that the circular referred to in your testimony? A. I think it is the one referred to in the testimony as having been promulgated about the time of my going to Elmira.

Pending the cross examination of the witness the Senate, on motion, adjourned to meet on Friday, August 31, at 9 o'clock, A. M.

EIGHTH DAY.

ALBANY, *August* 31, 1866.

The Senate met pursuant to adjournment, the president, Hon. THOMAS G. ALVORD, in the chair.

There being no quorum present, on motion of Mr. GIBSON, the Senate took a recess for fifteen minutes.

At the expiration of the recess, there being still no quorum present, the chair called the Senate to order.

THE PRESIDENT: The chair would desire that the officers of the Senate proceed to the different hotels and boarding houses in the city and endeavor to obtain the presence of those members of the Senate who have been in attendance heretofore, and who are now absent from the body in the chamber.

A quorum subsequently being present, the proceedings were resumed.

GEORGE W. SMITH, *respondent; cross-examination resumed:*

By Mr. SEDGWICK:

I now offer in evidence the circular of January 7, which was identified by the witness yesterday just before the adjournment:

Mr. SEDGWICK proceeded to read the circular as follows:

"HEADQUARTERS A. A. PROV. MARSHAL GEN. & SUPT. OF VOL. RECRUITING SERVICE WEST DIV. S. OF N. Y., ELMIRA, N. Y., *January* 7, 1865.

Circular.—It having come to my knowledge that certain provost marshals in this division have been in the habit of mustering men into the United States army at very low figures, they are notified that hereafter they will in no case muster recruits or substitutes unless the enlisted man shall receive at least five-eighths of all the money paid or agreed to be paid in his behalf. To this end it shall be the duty of the Provost Marshal to inform himself of the actual amount paid, or agreed to be paid, for local bounties or hire of substitutes in every case presented for his action. And he will receive the money belonging to the enlisted man, transmitting the same to the commandant of the rendezvous when the man is forwarded thither.

JNO. A. HADDOCK,
Maj. 12*th V. R. C., A. A. P. M. Gen. W. D. N. Y.*

Lt. Col. D. W. C. POOLE, *A. P. M.* 21*st Dist. Utica, N. Y.*"

Q. On the 9th or 10th you got another order, changing this, as I understand? A. About those dates.

Q. I understood you to testify that that order was delivered to McQuade; or the paper you brought back? A. Yes, sir.

Q. Did you tell Richardson what you had done with it? A. I did not.

Q. Did he make any inquiry as to what you did with it? A. I think he never asked for it.

Q. He sent you there on purpose to get it; you delivered it to another man; he never made any inquiry, and you never said anything to him about it? A. On my return from Elmira I was absent several days without seeing him. I ascertained afterwards that he had got the effect of both of those orders without the use of those papers.

Q. In other words advice of them had been sent to the Provost Marshal some other way? A. Not that I know of.

Q. He was acting upon these orders. A. I understood not. I understood that he got permission of Mr. Monroe for Collins to act as clerk, and another arrangement was made in the office by which men were permitted to go for the bounty that they chose to go for.

Q. He got the effect of the orders without using those papers? A. He got that from the Provost Marshal's office at Utica without using the papers.

Q. Did you know what had become of the papers? A. I suppose they remained with McQuade.

Q. Did you ever see them afterwards? A. I do not think I ever saw them until I obtained them of Colonel McQuade, for the purpose of delivering them to Richardson, I think, sometime in March.

Q. You afterwards handed them to him? A. Yes, sir.

Q. Collins remained in your office during the winter, didn't he? A. Yes, sir; he had a desk there, and paid part of the rent of the office, but had no business connection with him.

Q. Did you know of his going to Elmira in February? A. I did not until I learned it at Elmira.

Q. Do you remember, Judge Smith, that you swore to this on the court martial: "I think Collins did show me a letter written by Major Haddock to Captain Crandall, which he brought from Elmira, and I read it." A. What I mean by that is, I did not know at the time of his going, but after his return I learned that he had been there.

Q. He brought back a letter which he showed to you, and you read it? A. Yes, sir.

Q. Was that immediately after his return? A. I do not know how soon after.

Q. Then you do know of his returning from there with a letter? A. Yes, sir.

Q. Won't you look at that copy [showing witness paper] and see if it is a copy of the letter that he showed you, dated February 6th? A. I think that is a copy.

Mr. Sedgwick read the letter in evidence as follows:

"Headquarters, &c., Elmira, N. Y., *February* 6, 1865.

Capt. Crandall, *Provost Marshal, Utica, N. Y.:*

Captain—I shall very soon forward you six to eight more men

to act as guard. In case the sergeant whom I shall forward with the men does not prove to be a perfectly reliable man, you will not fail to report the fact to me, to the end that the man may be changed. You will use every effort in your power to guard against desertion. I wish you to understand distinctly, that when a man is enlisted and mustered, the credit for that man is due to the locality for which he enlisted. I shall in no case order a credit to be revoked, unless it shall appear that the local bounty committee were parties to a positive fraud.

For that reason you will use every precaution to get your men delivered at the rendezvous after muster. As regards the seventeen men delivered here, with only fifty dollars each in their possession, much complaint was made by the commandant of the rendezvous camp. If the men, however, agreed to go for fifty dollars each, there can be no just cause of complaint. It would probably be much better for the service if men would volunteer to go *for no money* at all, but influenced by patriotic motives.

Very respectfully, your obedient servant,

(Signed) JOHN A. HADDOCK,

Major, &c., &c."

Q. Now, sir, after that were men as you understood received and mustered for fifty dollars and less than fifty dollars? A. I have no knowledge of the practice of the office.

Q. Were you so informed? A. I heard that was the case.

Q. You have so testified on your direct examination yesterday? A. Certainly, I understood it to be so, and previous to that too.

Q. Did Mr. Collins state to you on that occasion that he brought back other papers? A. No, sir.

Q. Have you not so said? A. I do not recollect of his bringing back any other paper, or his speaking of bringing back any other.

Q Didn't he state that he brought back a sealed letter to Richardson, and didn't you so testify? A. Not that I know of.

Q. Didn't you so understand from him? A. No, sir.

Q. Was not that a paper that Haddock particularly requested you to get from Richardson—a letter that he sent by Collins? A. I have no recollection of any such circumstance.

Q. You were employed by Haddock to get certain papers from Richardson? A. On the 6th of February?

Q. No, afterwards?

Mr. SHAFER: I object. I insist that that question has been

put a hundred times, and it is not worth while to be repeating it constantly.

Q. Didn't he specify among other things when he asked you to get papers from Richardson, this letter that he sent by Collins without signature? A. No, sir; he did not specify or describe any such paper to me.

Q. Didn't he describe a paper in which he said to Richardson something about there being a probable deduction from the quota of 25 per cent, that he wanted that back, and didn't he speak of it in connection with the list of credits that he talked with you about at Canandaigua? A. I do not recollect that he did.

Q. Didn't he want the list of credits? A. The list of credits I recollect being spoken of, but I do not recollect of any other.

Q. Didn't he say in connection with that that he wanted you should get also a private letter to Richardson without signature in which he told him that there would be a deduction of the quota of 25 per cent? A. Not so far as I recollect; I do not recollect any such thing as that.

Q. Did you ever see the receipt that he gave or the letter that he sent acknowledging the receipt of the $2,000 that Collins took at that time? A. The original paper?

Q. Yes, sir. A. I do not know whether I did or not or whether it was produced upon the trial.

Q. Won't you look at that copy (showing witness paper) and see whether you recognize it—

Mr. Shafer objected.

The President: Does the chair understand you as objecting to that question asking him to look at a copy?

Mr. Shafer: Yes, sir.

The question was then put to the Senate and the objection declared to be overruled.

A. I think that is the paper.

Q. This was the paper he said he did not want you to get? A. Not, he did not want me to get.

Q. It was not necessary? A. It was not desired so far as I understood.

Q. It was one of the papers that he talked about? A. He did not talk about it in connection with the papers. He talked about it in connection with the fact that $2,000 having been sent to him, he sent back a paper relating to it of that nature.

Mr. Sedgwick: I propose to read the paper.

MR. SMITH: I object on the ground, *first*. It is not proved. The only evidence of this being the paper is the statement of the witness that he thinks it answers the oral description given by Haddock of the paper that he had made, and which the witness never saw. *Second*. The original is the highest evidence, and should be produced. *Third*. It is irrelevant.

MR. SEDGWICK: The answer to that is: This is not a paper on which any suit or demand is founded where it is necessary to have the original. It is a mere cross-examination to test his memory, and upon a collateral paper, and one entirely collateral where the original need not be produced, by any rule of law or evidence.

MR. SMITH: The answer to that is: The Court of Appeals of this State decided that the rule of evidence requiring the test to be produced, applies to all questions, not only where it is a material question, but a collateral, was in a case where a man was indicted for murder in Ulster county; the fact that a warrant had been issued against him, with which the deceased was in some way connected—

MR. SEDGWICK: We will relieve the gentleman by the production of the original.

Q. Is that Mr. Haddock's handwriting? A. It is his signature.

MR. SEDGWICK: I now offer to read the original.

MR. SMITH: I object on the ground that it is irrelevant. There is no evidence that Judge Smith had anything to do with it, or ever knew of its contents until long after the proceeding with which it is alleged he was improperly connected.

MR. SEDGWICK: This is a paper having direct reference to the transaction, mixed up with all the transactions in respect to this business, and it is a paper about which the counsel on the other side examined the witness on his direct examination. As one of the papers which were spoken of when he saw Haddock on the 4th of March; he referred in his direct examination to this very paper as one that he did not care anything about getting, and it was written for his own protection. It is intimately connected with all the other transactions in the case, and goes to make a part of the chain—a part of the transactions between these parties. It is directly relevant to the case, and certainly is competent for us to question about on the cross-examination of the witness.

MR. SMITH: The fact that this is upon a cross-examination cannot increase its admissibility. The cross-examination of course

only relates to those particulars in which it may tend to develop the credibility of the witness. The objection taken here, is that the evidence is immaterial. Now, does it connect itself with any charge against Judge Smith? The question is not on trial here as to whether there were improper relations between Haddock and Richardson, however improperly they may have behaved. Judge Smith is only responsible for it so far as he himself was improperly connected with it, and to put in evidence in this case papers relating to the transaction between these two other parties, in which, so far as the evidence now shows, and as the fact is, Judge Smith had no connection whatever, and which he had not the least knowledge of, would be bringing a matter entirely irrelevant and impertinent to the issue. Now, it is said we examined about these papers upon the direct examination—we inquired as to the papers—as to the motive in getting up certain papers. The witness in his statements has excluded from his action anything connected with the gift of the horse and the cutter, and the remitting of $2,000. There cannot be any other motive in offering this evidence, or urging its admission, than the hope that the prejudice of Senators against improper conduct of any officer in organizing or replenishing our national forces may be made to involve Judge Smith in in charges in which he is in nowise connected whatever. I submit that this paper, and all other papers, are entirely impertinent to the issue, unless it is shown Judge Smith knew of their contents and was connected with them. The ruling upon this paper is more important for this reason; if this paper, communicated by Haddock to Richardson, which Judge Smith has not been proved to be connected with, can be given in evidence, then, upon the same principle they would be entitled to give in evidence every transaction from the beginning to the end of the career of these two persons, which would be just as pertinent as the other, and all of them would only tend to explain the relation between these persons, and not give the least light upon the question as to the guilt or innocence of the accused.

Mr. Low: Does it appear what this $2,000 was given for?

Mr. Collins: It appears it was taken to him by Collins.

The question was then put to the Senate, and the objection declared to be overruled.

Mr. Sedgwick read the telegram in evidence as follows:

"ELMIRA, N. Y., *February* 6, 1865.

MR. A. RICHARDSON, Utica, N. Y.:

SIR.—I have received by the hands of Mr. Collins a package of money from you, said to contain $2,000. As I am ignorant of the use to which you wish the same applied, I beg you will transmit me further instructions relative thereto. I have placed the money on deposit until I hear from you.

Very respectfully, your obedient servant,

JNO. A. HADDOCK,

Major 12*th Regt. V. R. C., A. A. P. M. G.*"

Q. Mr. Haddock spoke to you of having that money when you consulted with him on the 4th of March? A. He told me he had it on deposit—had deposited it in the bank.

MR. H. C. MURPHY: I would like to know in this connection whether that telegram was sent at the time of the paper.

MR. SMITH: There is no evidence about it at all.

MR. SEDGWICK: There is no evidence except this, that on the same day the letter was sent back by Collins which Mr. Smith has admitted he saw and read.

Q. Is that paper in the handwriting of Mr. Haddock? A. I should say it is; this has no signature; the body of it is his handwriting.

Q. You testified that he spoke of certain letters without signatures as among papers he desired? A. If I so testified, I testified mistakenly; I did not mean to so testify.

MR. SHAFER: You did not testify so?

MR. SEDGWICK: He so answered.

MR. SHAFER: No, he did not.

WITNESS: If it is supposed that I said that he mentioned letters to me, as being letters without signatures, I say he did not describe any paper to me in that way, and I did not mean to answer it in that way.

MR. SHAFER: Does the counsel aver upon his recollection and responsibility as counsel, that he testified and described the letter as among the papers and documents which he desired to get without signature?

MR. SEDGWICK: I do say that he answered that distinctly.

MR. SHAFER: The counsel is entirely mistaken.

MR. SEDGWICK: The record will show which of us is right.

Q. Did Mr. Haddock describe this letter as among those he desired to get back? A. No, sir.

Q. You are clear in your recollection on that subject? A. Yes, sir.

Q. Did you ever have any conversation with Haddock about that letter? A. I do not think I ever did in my life until the matter arose at the trial.

Q. When did you see Haddock last? A. I saw him this morning.

Q. He is here in attendance? A. Yes, sir.

Q. Subpœaned as a witness? A. Yes, sir.

Mr. Sedgwick: I offer to read this paper in evidence.

Mr. Shafer: I object to it.

Mr. Sedgwick. I will merely state it as a paper of the same date as the last two papers read of the sixth of February—the paper without signature directed to Richardson in Haddock's handwriting.

Mr. Folger: Does the witness say that Haddock requested him to obtain this letter?

Mr. Sedgwick: He says he did not specify this letter, but requested him generally to obtain papers and telegrams in Richardson's hands, which he supposed might compromise him, connected with the quota.

Mr. Folger: Is there any evidence to show that the witness knew of this letter when he was requested to obtain and use means to obtain it.

Mr. Sedgwick: Not that he knew of this particular letter as distinguished from other letters and telegrams in the hands of Richardson which implicated Haddock.

Mr. Shafer: He swears distinctly upon looking at this letter, he never heard of it, and Haddock never mentioned it: that he never knew anything about it and never saw it until it was produced here on the stand. The theory of the prosecution in offering this letter, is first, if there is anything improper in it, to drag improperly into this case the relations which existed between Haddock and Richardson. Now what is disclosed here. The witness has shown in this case, that prior to the 3d day of March, 1865, he did not know anything at all about the relations which had existed between Haddock and Richardson. He has sworn to that upon his oath and there is no particle of proof to the contrary. Here is a letter that is dated on the 6th day of February, and the

proposition is, for the purpose of lugging into this case the trial of Haddock and the relations which existed between Haddock and Richardson, and to read as evidence against Judge Smith a letter, alleged to be written by Haddock to Richardson, without any signature—to do what? To connect him with a transaction of which he was entirely ignorant even until he comes upon the stand; when it was shown to him and now he swears he never knew that any relations of an improper character existed between Haddock and Richardson, until the third day of March, when he was informed of the taking of this horse and cutter and the $2,000, and that Haddock desired the obtaining of certain papers and letters from Richardson, without description so he could identify them; and now he swears that he never described this letter; yet they offer it for the second purpose of doing what? If it contains anything proper, to show that Judge Smith, without any description, without any knowledge of it, without knowing its contents, was endeavoring to obtain a letter which implicated Haddock, with a view to suppressing it, in support of the eighth charge! That is what they are attempting to do! They are attempting to drag in, to steal in as a part of their cross-examination, that which they should have proved in the first instance, and before they rested their case; a letter in support of the 8th charge, to wit: That Judge Smith had endeavored to get letters, papers and documents, that were prejudicial to Haddock, with a view of suppressing them! Yet, he swears he never knew of its contents and never heard of it. Is this fair? Will the Senate tolerate this? If Judge Smith knew of the contents of this letter, or if it was described to him, so he had any knowledge of it, it was the duty of the prosecution in the first instance, in support of their charge, to prove it before they rested; and I protest, that on the cross-examination, they cannot open their case by the introduction of papers, which were essential to the support of their case in the first instance. In either aspect, you will be doing great injustice to this respondent, to allow a letter, written by Haddock to Richardson, of which he was entirely ignorant and with which he had nothing to do, to be given in evidence against him. If you can give such evidence against a man and try him and convict him upon it, you can convict the purest man around this circle upon the opinions and declarations of others! What control had he over Haddock, or over Richardson? How is he to know what they had to do with each other, or what connection they had? Why

will you listen to it; unless it is upon the theory that he is to be surrounded by the embarrassments which are supposed to have surrounded Haddock. I protest against the admission of this evidence, unless it is shown clearly, affirmatively, and distinctly, that he knew of it. If you propose to maintain the proposition that he shall be prejudiced, and that he shall be adjudged by that over which he had no control, and of which he was ignorant, we may as well leave this circle, and let this case be decided on mere hearsay, and upon rumors that existed as to transactions between the merest strangers in the country.

Mr. Sedgwick: Perhaps a little simple statement of the case will show the Senate the propriety of this evidence, and I merely desire to make the statement plain, that we may know what is to be decided. We now propose to show, commencing with this letter of the date of the 6th of February, the original papers and telegrams which passed from Haddock to Richardson, so far as they are in our possession, and which Judge Smith, under his instructions, was trying to get back in order to suppress them. The judge has stated (that is his testimony, and I shall reserve any comments upon the probability of that until another period of this case,) that he was in pursuit of documents, telegrams and letters, of which no oral description was given him by the man who wanted him to get them; that it was a most general search that ever was instituted in the world for valuable papers, without any sort of instructions as to what they were; and what I now propose to show by him, is letters and telegrams, in Haddock's handwriting, which prior to the 6th of March had passed from him to Richardson, and which were and must be considered and conclusively proved to be the papers of which he was in search; unless Haddock can be called (as he appears to be in town) to disprove the fact that they were, and to show what papers his friend Judge Smith was in search of. I take it, it may be assumed, as conclusive in this case, if I produce certain papers and telegrams, which appear upon the subject, and which are of a character such as is described by the party; that they will be assumed to be proved to be the papers which he was in search of; unless some further evidence is given in explanation. With that view of the case, I shall offer such letters and telegrams as we have upon that subject, and such other papers as we have in our possession, that I can show to have passed between these parties.

Mr. Smith: I trust Senators will give their attention to the

question involved, and not be lured from the examination of the precise question here, by the propositions the counsel has found necessary to connect with this offer; their curiosity being excited to decide this question with a view to see what there may be in some other papers which may come hereafter. Of course the counsel knows an argument of that sort has no business with this question. Here the question is: Is the paper now offered admissible? The first question which arises in every lawyer's mind is: Is it proved? What is the proof of it? The only proof is, the paper is in the handwriting of Haddock, who is no party to this proceeding. That is the only proof there is. There is no proof that it was ever in Richardson's hands; there is no proof it was ever delivered or sent by Haddock to Richardson, and for aught that appears here, it may have been written by Haddock and handed to the counsel. It is not worth while to discuss this question any further than that single proposition. If this were to be disposed of by a court and by well established rules of evidence, this paper could not be read. The very object of taking testimony is to ascertain with verity the real transaction, so far as Judge Smith is concerned, and you would have simply an unsworn statement of an individual not a party to this proceeding, and you would act upon that in the absence of any evidence as to when it was made, or for what it was made. Now, I submit, as I did upon the other question which was here, that there is no propriety in receiving at all any paper which may have originated with Haddock or Richardson, in connection with the transactions between them; except those with which Judge Smith is proved to have been connected; for the objection now is much more manifest than then, because here—and I hope this will be understood—there is not a single word of evidence as to this paper, except that it is a document in the handwriting of Haddock; there is no proof that Richardson even ever saw it, or heard of it; there is no proof but what this paper may have been made to-day. Neither Haddock nor Richardson are parties to this proceeding, and their declarations or written statements are alike inadmissible, except as far as they are connected with the accused. So far as the evidence discloses Judge Smith's connection with this paper, it never has been described to him, or mentioned to him. The only proof before the Senate is to the effect that the first knowledge he had of this paper was, upon the trial by the court-martial. It would be

doing violence to every principle of law, even if the Senate might be inclined to be liberal, in hearing all they could of this proceeding, reserving the right to give it such weight hereafter as they think proper; it would be a violation of every principle of law, and every reason that would tend to regulate what should be proved with a view to determining an issue, to admit evidence of this sort. I claim that before any paper of this sort can be admitted, it would be necessary to prove: *first*, that it was authentic—that it was genuine, and that it was prepared by Haddock and sent by him to Richardson; *second*, that the paper was in possession of Richardson at the time when this interview took place between Haddock and Smith, early in March: *third*, that Smith knew the paper was in the possession of Richardson, and that he knew its contents. Until these three facts are established, the paper itself must be utterly material.

Mr. H. C. Murphy: I move you, Mr. President, as the sense of the Senate, that this paper cannot be read in evidence, unless it be shown that the contents of it were known to the accused at the time Haddock employed him to get these papers.

Mr. Sedgwick: I desire to make a single observation, and it is this: that Judge Smith testifies that he was employed by Haddock to get certain papers, letters and telegrams, being described as among the papers bearing upon this Oneida county business, from Richardson, with a general description of the contents of the papers, that is, they were such papers as might be used by Richardson to his prejudice, or substantially that; and therefore with that general knowledge of the contents of the papers, he endeavored to get the papers from Richardson. Now we prove that this letter, (and I shall follow it with the offer of the telegrams in the same way,) is a paper in Haddock's handwriting and directed to Richardson. It has been put in circulation by Haddock, and the inference is irresistible, from that chain of circumstances, that this is one of the papers which Smith was employed to obtain. If Judge Smith had described the papers, which Haddock had desired him to obtain, particularly, so we could identify them, then there would be no trouble in this matter; but he has only described them by their general character and description, therefore, we are at liberty to present such papers as we have that bear that character, and that answer to that general description. It is not our fault that that they are not more particularly described. It is sufficient, if we prove papers of the general character and descrip-

tion which the witness testifies to and throw the burden on him then of showing that there are other papers that might be referred to, or chooses to throw doubt upon their being the identical papers that he was in pursuit of.

Mr. Smith: The testimony of Judge Smith should be borne in mind, for it is not fully stated by the counsel in his argument. Judge Smith swore that he became satisfied that Richardson was in the possession of papers which he supposed he could hold in some way over Haddock, with the result of influencing his action, and Mr. Haddock desired him to get up these papers. There was no description of them given, and that the counsel seems to think extraordinary, and by and by at the proper time, he gives notice that some demonstration is to be made, by way of exhibiting the extreme incredibility of the witnesses statement. The witness says, he understood there were some papers; he supposed Richardson would know what Haddock referred to; and he knew that Haddock would know when the papers were brought back, whether they were the ones or not; so you see, there was no occasion for having any minute description of the papers. He was to get certain papers from Richardson if he could, and they were to be delivered to Haddock; it was entirely unimportant for him to have any description of them or to ask Haddock to relate their contents. Thus much for the statement as to the credibility of the witness; at any rate it must be deemed to be true, for it is entirely undisputed by any proof. The counsel says to support his argument as to the authenticity of this paper, that it is directed to Richardson! What of that? It is no proof of anything—the direction of an unsworn letter. There is no proof it was not directed to him today; it is no proof it was for him; it is no evidence it was sent to him; it is no evidence it was intended for him; it is no evidence it was ever made at all. Any third person may write a paper of that sort, but it is no evidence; it proves nothing. So that all you have here is a statement in writing of a person, not a party to this proceeding, and it is proved to be in his handwriting. That is the only evidence. The counsel says, that the testimony of Judge Smith does not disclose that he had a knowledge of the contents of the papers, therefore he is to give the papers in evidence. Right there lies the point involved here; it is exactly there if the counsel's motion prevails, he will do wrong to this man. Suppose one man is writing to another a letter which relates to a conspiracy to murder some one, and a third person, a lawyer or otherwise, is

employed to get up that letter, and it is merely described to him as a letter or paper that has been communicated; would it be fair or just, even to allow an implication, that the person who is employed to get up the letter is to be damaged in the slightest degree, by its contents until he is proven to have known what those contents were? If he was ignorant of what the letter contained, the mere act of getting it up—though he may have had a suspicion that it was a letter which the party desired to obtain from the other for the sake of relieving himself from his knowledge of some confidential communication—it is no evidence against the party until he is proven to have had a knowledge of the character or contents of it. But when the counsel admits that the evidence fails to show what these papers were, he admits his whole case away, because the proof to be material must show that the judge, at the time he perpetrated these acts they allege were so improper, knew he was suppressing papers improperly. If there is anything wrong about that, it remains to be discussed hereafter. There are a thousand ways in which the judge's mind may have been influenced. For all that appears, it may have been some private letter which may have related to some correspondence in relation to some friend; it may have related to some private transactions; it may have related to some party, or an expression about some party, which the other did not wish to have disclosed. There are a thousand such letters, I apprehend, passing, which parties would like to withdraw, and often third persons are engaged in the effort to withdraw, where there is nothing criminal in the letter, and nothing wrong in the third person, who is anxious to get the papers for his friend. I think the motion of the Senator is entirely appropriate, and presents the question fairly because it raises the precise point. These papers are to be rejected until it is shown that the judge at the time he engaged in these transactions knew of their contents; not merely that these were papers that Haddock was desirous of getting up; not merely that these were papers which he supposed Richardson might use as a rod over Haddock; for there are a thousand such things in this imperfect human nature of ours. We all know how often, perhaps, the acquaintance of some fair person of the opposite sex may have been held as a power over a man; and how often the knowledge of the private relations with a third person, which could be proved by letter, has been used to control or influence the action of another; but it is not fair to presume that upon the mere suggestion that it was a thing he desired to get up,

that it referred to this improved paper that is brought here. I submit again, earnestly and sincerely, that, in my judgment, to admit this paper under these circumstances would be a manifest and palpable violation of all the rules of evidence that ever were applied to any question that came before a court.

MR. SEDGWICK: With a view to bring this more fully before the Senate, I will identify the other papers.

Q. Are these several documents signed by Mr. Haddock in his handwriting? A. I judge so.

MR. SEDGWICK: I then offer in connection with the letter two telegrams of January 24th from Haddock to Richardson, and one of January 25th, together with this letter of February.

Mr. SESSIONS moved that the Senate be cleared for the purpose of consultation, which was carried.

On the doors being re-opened, the President announced that the Senate by a vote had decided to admit the papers offered by the counsel for the prosecution.

The counsel for the prosecution read in evidence the following letters and telegrams:

"*February* 6, 1865.

A. RICHARDSON, Esq.:

My Dear Sir—From present appearances it is quite probable that 25 per cent. of the quota under present call will never be called for. Consequently, if you have contracts *to fill quotas* of sub-districts positively made, great benefit will thereby accrue to you.

"Joe" shall be attended to.

None of the other counties, save Erie, are in the same condition as Oneida, and I do not think you could get a contract at Buffalo.

Respectfully,

Your friend."

"ELMIRA, N. Y., *Jan.* 26, 1865.

AARON RICHARDSON, *Baggs' Hotel, Utica, N. Y.*:

It stands at two thousand and eighty-eight (2088).

JNO. A. HADDOCK.

8 B. Col. 35.

Collect.

Have this message repeated back, so as to be *sure*.

J. A. H.

Collect."

"ELMIRA, N. Y., *January* 24, 1865.

AARON RICHARDSON, *Baggs' Hotel, Utica, N. Y.:*

She will be there to-morrow. Watch for her.

JNO. A. HADDOCK.

8 B. Col."

"ELMIRA, N. Y., *January* 25, 1865.

A. RICHARDSON, *Baggs' Hotel, Utica:*

She was sent to you yesterday. Has she come? Do you want another one for the others? I wrote you last night.

JNO. A. HADDOCK.

22 B. Col. 57.

Collect."

Cross-examination resumed:

Q. I understood you yesterday as answering the question of a Senator that you were acting for Haddock when you took the $5,000. Is that so—is that your answer? A. I was acting for him in the way I have stated.

Q. Did you take the five thousand dollars acting for him? A. I took it acting for him in the design to negotiate the papers out of Richardson's hands, and I deemed the taking of that a necessary part of it in order to have Richardson suppose I was really pursuing a plan to get orders for him.

Q. In other words, you took Richardson's money under the impression that that would deceive him as to whom you were acting for?

Mr. SHAFER: He has answered that.

Mr. SEDGWICK: He will answer that now.

The WITNESS: Yes, sir; I supposed that he would have been deceived by it.

Q. When did you first hear anything about this five thousand dollars? A. I answered yesterday, and I now repeat, as my recollection, that the first I heard of it was from Richardson after I returned from Rochester.

Q. While at Rochester was a letter written from Richardson to Haddock? A. You mean Rochester on the 10th?

Q. No. I mean on the fourth. A. I think he wrote a letter there.

Q. Do you not know he did? A. I have some impression that he did. I do not recollect it very particularly. I think he did.

Q. Do you not recollect enough about it to be able to testify

that you read it yourself? A. I have no recollection of any of its contents. I might have looked at it.

Q. That is not the question. Did you read it? A. I think I did.

Q. Was the five thousand dollars mentioned in that letter? A. Not that I know. I do not recollect that it was.

Q. Is that all you can say about it? A. Yes, sir.

Q. Can you not tell positively whether it was or was not? A. I have no recollection of the contents of that letter. I merely looked at it casually, I think.

Q. Casually enough to read it? A. I do not know that I read it through. He handed it to me and I looked at it somewhat. I do not think I read it critically at all.

Q. You have heard it stated and claimed that it did refer to the five thousand dollars?

Mr. SHAFER objected to the question on the ground that the prosecution were endeavoring to show the contents of the letter by the witness as referring to the $5,000, when the witness had stated that he did not recollect the contents of it.

The question on sustaining the objection of the respondent was put to the vote of the Senate, and declared to be carried.

Q. Was there any conversation between you and Richardson at that time as to the contents of that letter? A. I do not think there was.

Q. Where was it that he showed it to you? A. I think it must have been in the reading room of the Osborn House.

Q. What was the agreement between you and Richardson as to the compensation, when he employed you in his business? A. Originally?

Q. Yes. A. There was no exact or specific agreement; it was merely that he would pay me well for my services and compensate me liberally for what I should do.

Q. Did you have any conversation with him or any person acting for him as to the amount? A. Not that I know of.

Q. Did you have a conversation with his clerk about it? A. Yes, sir. Whether his clerk was speaking in behalf of Richardson or not, I do not know.

Q. The clerk who was in his employ? A. Yes, sir; I had a conversation with him.

Q. What was the amount mentioned as your compensation in

that conversation? A. He said that he thought he could induce Richardson to pay me a thousand dollars; he thought he might be induced to do that.

Q. When was that? A. Probably some time in the latter part of February. It may have been later; I do not recollect.

Q. It was before the services you performed in March were entered upon? A. It may have been, or it may have been later; I do not know.

Q. Was there anything said about two thousand dollars? A. I said in reply to that, jocularly, that if he would give me two thousand dollars, I should think he was a clever fellow.

Q. What did you understand the character of your employment to be? A. I understood that I was to get certain orders from him, such as the law would allow.

Q. What character were you acting in; were you acting professionally? A. In one sense, I was.

Q. You were acting professionally? A. In one sense; I did not consider it exactly in the ordinary relation of attorney and client.

Q. Have you not claimed you acted as an attorney? A. I do so claim.

Q. Acting as attorney? A. In one sense of that term.

Q. Do you know the date of your meeting with Haddock at Canandaigua? A. No; I do not know the exact date. My impression now is that it was some time about as late as the 24th of March.

Q. As late as the 24th of March? A. I think so.

Q. That was the meeting arranged by the telegrams that were shown you yesterday? A. I do not know about those telegrams; I can tell by reference to them.

Q. I refer to these telegrams, [showing witness telegrams.] A. I think those must be the ones.

Mr. Sedgwick: I think those were read yesterday.

Mr. Shafer: To make sure you had better read them again.

The counsel for the prosecution proceeded to read the following telegrams:

"Elmira, *March* 24, 1865.

Judge G. W. Smith:

It is impossible to come to Syracuse. Name some other place west. Important that I see you.

JOHN A. HADDOCK."

"UTICA, *March* 24, 1865.

JOHN A. HADDOCK :

I will be at Canandaigua to-night.

G. W. SMITH."

"ELMIRA, *March* 24, 1865.

G. W. SMITH, UTICA, N. Y. :

I will meet you at the Canandaigua House, Friday night. Answer. J. C. HADDOCK."

Q. Had you discussed such meeting before these telegrams had passed, with Haddock ? A. I am not certain but that we did. I do not know but what I went there upon his request.

Q. What was the subject of your meeting ? What was it about ? A. At Canandaigua ?

Q. Yes. A. It related almost wholly to the subject of these papers. I do not recollect any other topic being mentioned particularly except ordinary conversation.

Q. It was there you think he mentioned the paper in respect to credits ? A. I think that was the first description he gave of that paper. He did not give a very particular one then. It was disclosed as a paper relating to credits.

Q. Was that a paper which he was desirous that you should get back? A. That was one of them.

Q. At that time did he discuss any other paper ? A. I do not think he did. I do not think he mentioned any other at that time. I am quite positive he did not.

Q. How long were you together ? You spent the night there ? A. Yes, sir, and came off in the morning train. He went another way I suppose; he did not come with me.

Q. Did you know anything at the time of that telegram to Oswego ,that we speak of, warning the marshal there against Richardson ? A. He had told me about sending such telegram either that he had sent it or had prepared one to send.

Q. Do you remember having seen it ? A. I do not know that I saw it. I have no recollection of seeing it.

Q. That was sent in February, was it not ? A. No, in March.

Q. That was sent to Captain Scott ? A. Yes sir, of Oswego.

Q. That was on the 6th ? A. It seems to be dated the 6th, there. I do not know what date it was sent.

Q. Was that discussed on your meeting of which you have

spoken at Elmira on the 4th? A. As I told you he informed me that he had prepared such a telegram. I think it was sent.

Q. On the 9th you telegraphed to him to give the privilege of putting in recruits for other districts and other places at Utica? A. Yes, sir.

Q. That would avoid entirely the warning to Scott? A. I do not know that it would.

Q. Captain Scott would not know anything about recruits being put in at Utica. He could not object to those put in the Utica office under Crandall? A. No, sir.

Q. The effect of the order you obtained on the 9th of March would be if he put in these recruits at Utica, as he was authorized to do, to evade the effect of the telegram to Scott altogether? A. So far it would.

Q. Was that the purpose of obtaining that order? A. Not that I know of.

Q. What do you mean in that telegram of yours by the "State law;" you say "pay recruits as the State law may allow?". A. I do not know that I understood the provisions of the State law at that time or now well enough to state. There was some point about it supposed to be known to those familiar with it. What that was I do not know.

Q. Was that put in that form at Richardson's suggestion? A. That I do not know.

Mr. Folger: What is the date of that telegram?

Mr. Sedgwick: March 9th.

Q. [By Mr. Folger.] Had the State law passed then? A. I conclude it had.

Q. You do not remember how that was put in? A. I do not.

Q. Nor what law nor provision it particularly referred to? A. Not the particular provision. It related to a law then lately passed in regard to regulating the subject of bounty.

Q. In your telegram of the 13th of March, you say "everything is right." What is the meaning of that expression? A. That I was expecting to get the papers. It related to that.

Q. It related to your obtaining the papers? A. Yes, sir.

Q. Did you get the five thousand dollars on the 16th of March? A. It was about the 16th.

Q. Will you state exactly what you did with that money at Elmira? A. When I went to Elmira, after some general conversa-

tion with Haddock, I informed him that I had got Richardson's money. I believe I so stated to him.

Q. Where was that? A. That was in his office.

Q. Was anybody present? A. I think no one was present. I exposed the ends of the seven-thirties to his view, and put them back in my pocket.

Q. What was said there on your exhibiting the money? A. I do not think there was anything particularly said. I think he shook his head and said something to the effect that he wanted nothing to do with Richardson.

Q. Did he not say that he had made up his mind that he would have nothing more to do with him? A. That was the substance of it.

Q. Was not that the expression as you have heretofore testified to? A. That was the substance.

Q. That he was determined not to have anything more to do with Richardson? A. Yes, sir.

Q. Did you urge him to take the money? A. I did not; I did ask him to take it; I did not offer it to him.

Q. You did what you have described; you took out the money and exhibited the money to him, and showed him what it was? A. Yes, sir.

Q. He shook his head and determined not to have anything more to do with it? A. Yes, sir.

Q. After that time did he make any order for Richardson's benefit, or intended to be for his benefit and convenience? A. I think there were some orders got; I forgot what they were.

Q. Did you procure an order from him in favor of Richardson at that very time, on the 16th or 17th? A. I think not.

Q. When you offered that money to him on that occasion, or when you exhibited it to him, as you call it, did you tell him Richardson was under arrest? A. I think I did tell him in the course of the conversation.

Q. Then the fact had been talked of between you? A. I think so.

Q. He was under arrest by Major Beadle? A. Yes, sir.

Q. Do you know by whose orders Major Beadle arrested him? A. I do not.

Q. Do you know whether it was by Haddock's orders? Haddock telegraphed that it was not by his order.

Q. What did he say in the conversation you had with him, when

you spoke of it? Did he say it was by his order? A. He said it was not by his order.

Q. When were you at Elmira, what day? A. I cannot be exact as to the date. A flood had risen, which detained me a day or two on the way; I staid there one night on account of the roads being broken up. I think I did not get to Elmira until about the 19th.

Q. You think it was about that date? A. Yes, sir; the 18th or 19th.

Q. Had you anything to do in February, the 17th, with the telegram to Crandall, in respect to the men that were mustered in at his office? A. I do not know that I had.

Q. Did you know of it at the time? A. I knew it after it had transpired,—you mean the telegram in reference to thieves and bounty jumpers?

Q. Yes. A. I think I first heard of that in the newspapers of the city.

Q. That was a thing made public at the time? A. I think so.

Q. Did you discuss that with Haddock at any time after the 4th of March? A. It was talked of in our conversation about the 4th of March.

Q. But you did not advise him beforehand? A. No, sir.

Q. Did Haddock tell you the purpose of it when you were discussing the matter with him on or before the 4th of March? A. I think he stated the reasons of it.

Q. What were they? A. That unfit men were sent. He referred to the report of Capt. Ladd, or some officer, stating that men disqualified by venereal diseases, piles, &c., and bad characters generally, were being sent from Utica in large numbers. He said also, on the same occasion, that fifteen men furnished from that office had deserted from Auburn in a body, and he told me that he was prompted by these reasons to send that telegram.

Q. Was that talked of between you and Haddock as being done by Richardson—putting those men into the army? A. That was the idea, that Richardson was putting in men of that stamp.

Q. Was that discussion and talk about that telegram at the time when you were there on the 4th of March? A. I think so. I think we discussed it then.

Q. Where did you go on the 9th or 10th of January, on your return from Elmira? A. Booneville.

Q. How long did you remain there without visiting Utica? A.

I was up several days that time. I think a snow-storm interfered, and it took us two or three days to get up there, and I think quite a number of days elapsed before I got back to Utica again.

Q. Between the time when you returned from Elmira on the 4th of March, and the 9th of March when you telegraphed this order, had you any communication from Haddock? A. I returned to Elmira about the 6th.

Q. Then you saw him in the mean time? A. In the mean time.

Q. Did you have any conversation with him in respect to granting orders for Richardson when you were there on the 6th? A. I presume I did.

Q. Did you ask him for this order that you telegraphed for afterwards? A. I am not certain that I did. I may have asked him whether such an order would be admissible—whether he could make such an order properly.

Q. Have you any recollection of talking with him on that subject? A. Yes, I think I asked him—I think that several orders that he wanted I went over in detail, and inquired whether such and such were grantable within his authority.

Q. Did you do that with the view of getting any of them if they were grantable? A. I did it with the view of getting information as to what could be done in order to tell Richardson.

Mr. H. C. Murphy: When was this?

Mr. Sedgwick: On the 6th of March.

The Witness: We were expecting at that time that probably some arrest might take place, or probably some interruption of the whole matter. We were expecting it daily.

Q. But you were going to keep on getting orders until that did take place? A. Yes, sir, and have him understand that he could get orders until the rupture should occur.

Q. Was this pamphlet published by [producing a pamphlet]? A. Yes, sir.

Q. Written and published by your direction? A. Yes, sir.

Re-direct examination:

By Mr. Shafer:

Q. I think you have already answered upon this subject explicitly, but unless there should be some misapprehension, I desire to put a specific question, whether you knew anything of a letter written by Haddock to Richardson, unsigned, over which we have

had a controversy, and with reference to which the Senate went into secret session, before the 4th day of March, 1865? A. Nothing whatever.

Q. Did you know anything of it then by description? A. I did not.

Q. When did you first see that letter? A. I first saw it at the trial at Elmira. Then it first came to my knowledge that a letter of that description had been written.

Q. Were any of the documents, or any of the letters, or any of the telegrams, or any of the papers which Haddock desired you to obtain from Richardson, ever described by him to you, except the paper concerning the credits? A. That was the most particular description of any of them.

Q. When was that? A. I think the description was never given to me until we had the talk about it on the 24th of March, at Canandaigua; he was still hoping to get the papers then, and he made a more particular description of it.

Q. What was the description? A. It was simply to say that it was a paper containing the list of credits.

Q. And the rest was a general description, the contents of which you are ignorant of? A. Entirely so.

Q. And the first you ever heard or knew of the two thousand dollars being sent by Collins to Haddock, of a horse and cutter, or ever heard or suspected, it was on the 3d or 4th of March at Elmira? A. Yes, sir.

Q. Did you, prior to that time, ever suspect in any way, manner or form, that there had been any improper communications or relations existing between Haddock and Richardson in any shape whatever? A. I had no knowledge of it. I didn't know anything about it. The most I knew was that Collins returned on one occasion and showed me a letter he had written to Captain Crandall at the office of the provost marshal. I supposed that to be a public letter intended for the files of that office.

Q. What did you intend to do with these papers, documents and telegrams, if you had obtained them from Richardson? A. If I had obtained them I intended to return them to Haddock.

Q. Did you intend to suppress them? A. I intended to give them back to Haddock if I obtained them.

Q. Did you intend to suppress them? A. I did not.

Q. Did you intend to destroy them? A. I did not intend to

destroy them. I intended to give them back to Haddock; that was the purpose.

Q. Did you have any other purpose? A. None other.

Q. The two thousand dollars was delivered, as you understand it, by Collins, to Haddock on the 6th of February? A. I don't know; the receipt probably will show. I don't recollect the date.

By Mr. Low:

How were you to determine whether Richardson gave you the right papers; the ones desired by Haddock? A. I supposed that the request was general, to embrace all that he had received.

Q. They were to be selected by Richardson? A. I supposed that was the idea.

By Mr. Shafer:

Didn't you expect Haddock would know, when they were returned, whether they were the papers he wanted? A. Of course they were to be submitted to his inspection, and then to be determined whether he had the papers required.

By Mr. Sedgwick:

You don't expect that Haddock wanted those papers back for the purpose of publishing them and vindicating his reputation?

Mr. SHAFER: I have not examined him on that point. I insist on adhering to some rule. I insist that the rule shall be applied in this case.

The question was put on the admission of the interrogation, and the President declared the objection sustained.

Mr. SHAFER: We would like to have the list of the subpœnaed witnesses read.

The list was read by the Clerk.

Mr. SHAFER: We are in the condition that the Senate sees. While we do not deem it important to call all the witnesses that have been named, yet there are a couple we desire to examine.

The PRESIDENT: The counsel are not ready to proceed?

Mr. SHAFER: We are not, sir. I would like to inquire whether the Sergeant-at-Arms has returned.

The PRESIDENT: The chair is informed that the Sergeant-at-Arms will not return until half-past 2 o'clock.

The PRESIDENT: The chair understands that the counsel are not ready to proceed for the want of witnesses. What is the pleasure of the Senate?

On motion of Mr. Low, the Senate adjourned till half-past 3 o'clock.

AFTERNOON SESSION.

The Senate re-assembled at half-past three o'clock, when the proceedings were resumed.

MR. SHAFER: Mr. PRESIDENT, in consequence of the non-arrival of our witnesses and of our desire to close the case (knowing the anxiety of Senators not to be longer delayed than necessary), and by reason of a stipulation entered into by the other side that if we read the testimony of Mr. Utley, given on the trial of Haddock before the court martial, in lieu of his personal examination, they will have no further testimony to offer, we have reluctantly consented that this course be pursued.

The Clerk proceeded in behalf of the respondent to read from the record of the proceedings on the trial of John H. Haddock before the court martial, the testimony of Henry T. Utley, as follows:

HENRY T. UTLEY *a witness on the part of the defense was duly sworn in the presence of the accused, and examined as follows:*

Questions by George W. Smith, counsel for the accused.

Q. Where do you reside? A. My place of business is Utica; my residence is in Waterville.

Q. Has your place of business been Utica since the first of December last? A. Yes, sir.

Q. Were you partner of George W. Smith? A. I was from the 15th of August, 1864, until about the first of April last.

Q. What is your business? A. I am an attorney at law.

Q. Are you the person who became bail for Charles E. Norton?

Question objected to. The counsel for the accused proposed to show by this witness that he became bail for Norton; that he consulted with Judge Bacon in regard to bailing Norton; that Judge Bacon consented; that he informed Smith of that fact before he bailed him; and that Smith did not receive in any form any part of the bounty. Also to show the letter from Judge Smith to Maj. Haddock in relation to the enlistment of Norton, as well as Maj. Haddock's indorsement of said letter.

The Judge Advocate objected to the evidence, excepting that relating to the letter to Maj. Haddock and the indorsement thereon; first, as incompetent and immaterial; second, as an attempt by evidence in chief, to support the witness,

Smith, upon matters collateral to this issue; third, because the credibility of the witness, Smith, cannot be supported by evidence in a transaction in which the accused had no part as far as the portion of it now referred to is concerned.

The court was cleared for deliberation, and after a few minutes thus spent, the doors were opened, and the president of the court announced, in the presence of the accused, that the court had decided to permit the introduction of the letter from Judge Smith to Maj. Haddock; the indorsement by the latter thereon; the facts of the enlistment of Norton; excluding therefrom as irrelevant and immaterial the conversations with and opinions and assent of persons not alluded to in the evidence and in no way connected as parties with the issue on trial.

Q. State the circumstances attending the giving of this order bringing up Norton for bail? A. If it be proper I would like to make one remark preliminary to speaking upon the order. Two letters written by Norton from the jail at Utica, were put into my hands. The letters requested the attorney to whom they were addressed to intercede for him, and get him out of jail and into the service; and stated that as a compensation for so doing he would give him the local bounty. Those letters were placed in my hands with the request that I would take his case in charge. I proceeded to the jail and had an interview with Norton. I assured him I would take hold of his case upon those terms; that I should have to consult with the proper bailing officer, and could not determine what could be done until I had had an interview with him. I went to the proper officer, Judge Bacon, and stated all the facts, and desired to know of him if he could be let to bail and got into the service, if so I propose to do it.

Q. State the result of that interview? A. An order was written by myself, and signed by Judge Bacon, requiring the sheriff to bring Norton before him to be let to bail. That order I delivered to the deputy sheriff, and he executed it. I directed the sheriff, before Norton should be brought before officers to be let to bail, to take him to the Provost Marshal's office first, and submit him to a surgical examination to determine whether he was fit for service; that was done and he was pronounced fit. There I ascertained that an order had been issued to Poole to the effect that he could muster no man as a volunteer without the local bounty being paid

to the volunteer. I stated to him how the facts were, and Norton stated the same thing. He stated that he could not disobey the order: and I asked him whether if a special order were obtained from Maj. Haddock ordering him to be mustered, he could do so. He said he would, and thereupon Norton was taken back to jail.

Q. Had you had any conversation with Smith upon the subject of Norton up to that time? A. No, sir, not any; I wrote a letter to Maj. Haddock, detailing all the facts of Norton's case, and after writing it requested Judge Smith to write in that letter an indorsement of myself; I was not personally acquainted with Major Haddock. He did so, and that letter I sent to Major Haddock. Two or three days thereafter I received an answer through the hands of deputy sheriff Hubbard. The order was not such as was necessary in the case. I then requested Judge Smith to write to Major Haddock detailing more fully and explicitly the points in the case and the nature of the order we desired. Judge Smith did so, and two or three days thereafter I received an order.

The Judge Advocate here called the attention of the court to the fact that all this evidence was entirely immaterial, and not bearing upon the issue to be tried here.

Q. Is the letter I hand you a copy of the letter which was sent, and which is supposed to have obtained the order for the enlistment of Norton, together with the indorsement of Maj. Haddock thereon? A. My impression is that it is a copy of the letter which the Judge wrote on the second occasion, when I requested; and I have no doubt the endorsement is that of Major Haddock.

Q. What became of the original letter? A. I filed it with Col. Poole, who desired that I should leave it on file in his office.

The counsel for the accused thereupon offered and read in evidence the said letter and indorsement thereon, as follows:

[No. 1, copy.] UTICA, *December* 30, 1864.

My Dear Haddock: Allow me a word further in explanation of the matter of the enlistment of Charles E. Norton, which perhaps has been miscarried. Norton proposes in consideration that Utley bails him out, and in consideration of his other services, to volunteer, and to give Utley such bounty as may be obtained hereafter from the county on account of his enlistment—as between the volunteer and the government, the case is as if he enlisted without local bounty—he having of course all the United States bounties given in such cases.

The proposition in your letter as to sending the money to Elmira, to be held by you, would be entirely satisfactory if the money could be obtained, but the county has not as yet made any provisions for raising the money, &c. No bonds will be issued for some ten days, of course Utley cannot raise the money and advance it on the contingency of the recruit's action at Elmira, when he might finally interpose difficulty.

I do not see why the man can not be mustered in. The Government is to lose nothing even if the recruit should desert, and Utley will see to it personally that Norton is delivered at Elmira, and no credit would be given the county until he is delivered.

The whole arrangement is at the express desire of Norton, who fully understands his rights. What is desired is simply directions to muster him into the service and forward him to Elmira, and if he does not report there all right, the whole goes for nothing.

As ever, faithfully yours,

GEO. W. SMITH.

Major JOHN A. HADDOCK, Elmira.

P. S. I have written you twice lately.

Col. Poole will muster the man on showing him this note, but if the man deserts before reaching here, the credit will not be allowed.

Your letter fully explains the case. To my utter surprise, but doubtless to your gratification, I am ordered to levy only 275 men on the 21st District; a large number if not all of your Oneida enlistments must have been for three years. Tell Col. Mc of this.

In haste, your friend,

JNO. A. HADDOCK,

Major, &c., &c., &c.

Q. Continue your statement? A. I was saying that two or three days after, I received an order indorsed upon the same letter that Judge Smith wrote. I waited a day or two, perhaps longer, until they would be sending from Utica to Elmira a squad of volunteers. When that day arrived I requested the deputy sheriff, Donaldson, to produce Norton for the purpose of being let to bail and be mustered in. He did so.

Q. Upon what order? A. There was no further order than the one first issued. The judge who issued the order was out of the city, and as there was no other officer before whom he could be let

to bail, I took him before Judge Smith, stating to him substantially what had transpired and what Judge Bacon had consented to do; and I desired him to let Norton to bail in the same manner. He consented to do so, and did so; I was surety. After being bailed I took Norton before the Provost Marshal, and he was mustered in, but I was required to produce him at Elmira. I employed an officer to do so, and he did land him at Elmira, and credit was given to the town of Sangersfield. I defrayed the entire expenses and paid Norton $50 (which was not in the contract), and received a county bond for the sum of $600.

Q. To whom did you pay the expenses of getting Norton to Elmira? A. To one Cole; I do not know his christian name; an officer connected with the service at Utica.

Q. What service? A. He was in some employment connected with the Provost Marshal's office, the precise nature of which I do not know.

Q. Did Norton go to Elmira with a squad of other men? A. I only know from information.

Q. When Norton was taken before the board of enrollment was Monroe the Commissioner there? A. He was the first time.

Q. Did he oppose the enlistment of Norton upon that occasion? A. He did not.

Q. Did he favor it? A. He appeared to; he thought it was a a proper case for enlistment, under the circumstances.

Q. Did he insist there that he ought not to be enlisted because he was charged with the commission of a felony? A. Col. Poole remarked that the act of Congress, in his opinion, prohibited the enlistment of such men. Commissioner Monroe informed him that Norton did not come under that provision; that he was not indicted; that he was simply charged with felony, and that the act of Congress contemplated convicted felons. Colonel Poole, on seeing the provisions of the act and hearing the facts of Norton's case, yielded the point.

Q. Did you consult also with the prosecuting witness in regard to this man being bailed? A. Judge Bacon would not consent to his being bailed without the consent of the district attorney and the prosecuting witness.

Q. Did you in point of fact see both? A. I saw the district attorney, and another gentleman saw the prosecuting witness and obtained from him a written statement, which was laid before Judge Bacon.

Q. Has Smith ever had any sort of interest in any portion of that bounty? A. He has not.

Q. Has anything ever been paid to him from it? A. No, sir.

Q. Or promised to be paid to him? No, sir.

Q. Has he ever been led to expect any portion of it whatever? A. Not by my act.

Q. This matter you regarded as entirely outside of the partnership? A. That was my view of it at the time.

Q. State the facts in regard to the cases where affidavits were drawn upon application for exemptions by persons drawn upon the National Guards?

Question objected to and objection sustained.

Cross-examination.

Questions by the Judge Advocate:

Q. Did you tell Judge Bacon that this man, if enlisted, was to go forward deprived of his bounty? A. I did not.

Q. Did you tell him he was to go forward, no security of any kind by way of money or otherwise being put up against his desertion? A. No, sir.

Q. Did you disclose to him in any way that you was to receive the bounty of $600 which would accrue to this man? A. No, sir, I did not.

Q. What was Norton accused of? A. Grand larceny.

Q. For stealing what? A. Wearing apparel and jewelry from his room-mate.

Q. Who was the prosecuting witness? A. One Steele.

Q. Was he accused also of burglary? A. I was not aware that he was.

Q. Did Norton go to Elmira in irons? A. I can not say.

Q. What did you understand to be the fact? A. I was informed that such was the case.

Q. Did you understand that before leaving the city he fell upon his guard and injuring him severely, nearly murdering him? A. I understood he had a difficulty.

Q. Did not you understand that on the way to the railroad he assaulted the guard and injured him very severely? A. No, sir, not on that occasion; it was the night before.

Q. You understood he injured his guard very severely? A. No, sir, no injury at all.

Q. Did not you understand that he wounded him? A. No, sir.

Q. Did not you understand before he left the city a violent assault was made by him upon the guard? A. No, sir.

Q. Did you understand any assault was made? A. I understood he was in charge of Ferguson, and, learning that Cole was not present, took a knife from his pocket, opened it, and started for the door. Ferguson placed himself against the door and told him he could not go out. Norton came towards him in a threatening attitude and insisted that he would go. Ferguson told him he could not, and he did not; but as it was told me, there was no collision between them.

Q. You did not understand that Ferguson was hurt? A. No, sir; that was the night before he left the city.

Q. Do you intend to say that Judge Smith did not issue the order to bring up Norton? A. I do not intend to say there was no such order given. There was none at my procurement.

Q. Then you had not anything to do with getting this order? A. No, sir, I got the order from Judge Bacon, and requested the sheriff the second time to bring out Norton on that order.

Q. Do you mean that he brought Norton out a second time on Judge Bacon's order? A. He did so, so far as I know.

Q. You told Judge Smith, did you not, that you were to have the entire bounty? A. I did not.

Q. How came he then to put it into the letter he wrote Major Haddock, that the bounty was to be paid for the service rendered for getting him out? A. I was not to have all of it; I was to make a disbursement of it.

Q. You disclosed to Smith that Norton was not to have it? A. Certainly.

Q. And you did not disclose the fact to Judge Bacon? A. No, sir.

Q. How many letters in all do you know Judge Smith received from Maj. Haddock during the winter? A. My answer would be a mere opinion.

Q. State it so far as you know? A. Perhaps four or five.

Q. Were any read to you? A. Not any except those relating to Norton.

Q. Were any others read or shown to you? A. No, sir.

Q. How came that? A. They were directed to him individually and were private letters, I supposed, and I never opened them.

Q. Did anything ever occur about your not seeing them? A. Not that I recollect.

Q. Do you not recollect an occasion once when Smith was reading a letter from Major Haddock, in the office, an occurrence about your not seeing it? A. I do not recollect any circumstance of the kind.

Re-direct examination:

Questions by Judge Smith, counsel for the accused:

Q. State about that second order; the one given by Judge Smith, and under what circumstances it was given? A. I can't state the circumstances of the order being given. I did not read it. After Norton was bailed the deputy sheriff remarked that he desired to have some order which would show that he had proceeded regularly in bringing Norton before Judge Smith; upon that Judge Smith sat down at his table and wrote an order, or something, and handed it to the deputy sheriff.

Question by the Court:

Q. What was the amount of the bail? A. $1,000; the sum required by the committing officer.

Questions by the Judge Advocate:

Q. Have you settled up the partnership affairs with Judge Smith? A. I have not.

Q. Have you had any settlement at all about them? A. No, sir; we simply kept a cash book, and debits and credits have been entered.

Q. What did you do with the $600 bond? A. Got it discounted.

Q. What did you get? A. $600.

Q. Who cashed it? A. The Rome Savings Bank.

Q. And what did you do with the money? A. I paid $25 of it to the deputy sheriff; $50 to officer Cole; $50 was handed to Norton, or at least to Provost Marshal Poole.

Q. By you? A. By me or by McIntosh, and there were some other disbursements connected with it in the sum of ten or fifteen dollars.

Q. What were they? A. I do not recollect. I think there was some little money beside that advanced to Norton by McIntosh, of the net remainder. I gave one half to the General, who handed me the letters from Norton.

Q. How much was that? A. In the neighborhood of $220.

Q. To whom did you hand it? A. To J. C. McIntosh. The rest I kept myself.

Q. Except Monroe's stating his opinion that the act of Congress referring to felons, implied convicted felons, do you mean to say that he said any thing in favor of the enlistment of Norton; and if so, state what it was? A. I can not state what he said. I can only state the inference.

Q. Do not you remember that he went to call Col. Poole from below upon the ground that Norton was not a proper person to be enlisted? A. He did not as far as I know.

Questions by counsel for accused:

Q. He made no remonstrance did he? A. I did not understand that he did. My impression was that he was in favor of it.

Q. You say $50 of the money was paid to Cole; who was he? A. The officer who took him in charge.

Q. Was he a special agent of Poole? A. I cannot say. He was connected with the office in some way.

Q. Did he remain there some considerable time after? A. Yes, sir.

Q. For what purpose did Cole receive that $50; what did he exact it for?

Question objected to and waived.

Q. In answer to the question whether Smith was led to expect any portion of that bounty money, you replied "Not by me," (you). Did you ever hear or know of any other person leading Smith to expect any thing of that sort? A. No, sir, I never did.

Mr. LOW: Is there any evidence to show when the first public charge or complaint was filed against Haddock?

Mr. SHAFER: It was long after these alleged transactions on the part of Mr. Smith.

Mr. LOW: After the 10th of March?

Mr. SHAFER: Yes, sir.

Mr. SEDGWICK: There is no evidence on that point; there is evidence when he was arrested.

Mr. SHAFER: It is not very likely a charge was made against Haddock before the 27th of March, and he remained in office, continuing his business. That closes the evidence, I believe, on the part of the respondent.

The PRESIDENT: The Chair understands that the evidence on the part of the prosecution and on the part of the defense in this proceeding is closed.

Mr. Gibson offered the following resolution:

Resolved, That the further proceedings in this case be adjourned to the first Tuesday in January next, and that so much of the case as has not been printed, be printed forthwith, and one copy thereof be furnished by mail immediately thereafter to each of the Senators, and three copies to each of the counsel on each side.

Which was carried.

On motion, the Senate adjourned to meet on the first Tuesday in January, 1867.

NINTH DAY.

ALBANY, *January* 4, 1867.

The Senate met pursuant to adjournment—The President, Hon. STEWART L. WOODFORD, Lieutenant-Governor, in the chair.

The President announced the special order of the day, being the hearing of the arguments of counsel.

MR. FOLGER offered the following resolution:

Resolved, That, in the argument of the case of the People against the County Judge of Oneida county, one counsel for the prosecution be heard in opening the case for the People, and that one or two counsel be heard for the respondent, and that one counsel for the prosecution be heard in conclusion; and that the 8th day of January inst., at 3 o'clock P. M., be fixed as the time for the commencement of the arguments, and that the same and the further consideration of the case be continued from day to day, beginning at that hour until the matter is concluded, or until otherwise ordered.

Which was adopted.

On motion, the Senate adjourned.

TENTH DAY.

ALBANY, *January* 8, 1867.

The Senate met at three o'clock P. M. pursuant to adjournment, when the proceedings were resumed.

MR. SHAFER objected to the argument proceeding without the presence of the Stenographer to take notes for the purpose of making a complete record of the remainder of the proceedings.

MR. CROWLEY offered the following resolution:

Resolved, That in order to make complete the record in this case the Stenographer heretofore appointed by the President be required to be present at all meetings of the Senate when the case is under consideration, and to take full minutes of all proceedings.

Which was adopted.

The counsel for the respondent submitted the following:

Mr. Henry Smith, one of the counsel for the respondent, moves that the counsel for the prosecution be required, in his opening argument, to present all the considerations upon which he relies to establish the charges preferred, to the end that the respondent's counsel may have an opportunity of answering the same.

Mr. SEDGWICK: Under the resolution directing the argument in this case to proceed, as I understand it, I am to be permitted to reply to the counsel on the other side and to urge certain affirmative propositions of a character which are covered, as I suppose, entirely by the printed points which I have prepared in this case, and I must not be subject to interruptions of counsel, saying that I am uttering something which I should have said before, or that I am stating something which should not be stated. As I understand this case, it has been treated, and I am disposed to treat it with the greatest fairness and propriety. It has been conducted in the usual way. One of the counsel for the prosecution in this proceeding [Mr. Waterman], opened the case at great length both upon the law and upon the facts—opening the case on the facts as fully as he was allowed to do by the counsel on the other side—the opening taking from pages 182 to 241 in the printed case. In that argument he went over all the points of law very fully and very ably, and he also referred to the evidence which would be relied upon to support the charges. That should have been sufficient, and under any ordinary course of proceeding, in any court in which I have had the honor to practice, would have been all that could have been possibly required. The evidence which he referred to was the evidence of the other side. Their own case was opened at great length by one of the respondent's counsel. Now the ordinary course in all criminal proceedings is this: the case having been opened and the evidence submitted, the counsel for the accused addresses the court and jury and the counsel for the prosecution replies. If any other practice has ever prevailed in any court in this State, it has been in some court, the practice of which I am unacquainted with. And the counsel upon the other side, knowing that my associate, who had preceded me in this case, had said all he desired to say in regard to it, and, I think, with a sinister design of compelling counsel for the prosecution, who desire to address this Senate but once, to precede him, that he might have the benefit of the close instead

of the counsel for the prosecution, procured this order of proceedings to be adopted. In compliance with that order of the Senate, I propose not to consume the time of the Senate by reading from the evidence in this case, nor by any extended argument upon the law. That he has had the benefit of from beginning to end, and I shall have but very little to say in regard to it. Neither shall I, at any stage of this case, undertake to read the testimony which has been given or to refer to it at any very great length; but merely to call the recollection of the Senate to it in the briefest manner in which I can put this case to the Senate; and I am surprised, and I regret that the counsel upon the other side have seen fit to undertake to control the speech of the counsel for the prosecution, or to say in what order, and to what extent, and in what time they shall discuss the question before the Senate. I look upon it as unfair and improper, and as undertaking to obtain an advantage to which the counsel is not entitled to in the ordinary course of proceedings in any court, and which is intended to embarrass the counsel for the prosecution, and is designed for no other purpose, because in these printed points which have been furnished the counsel is the whole substance of this case, from beginning to end, upon the law and the facts, and there is not a particle of proof in the case to which reference is not made to the testimony relied upon to support it under the proper head, as presented in this printed brief. Now, I do not believe that the Senate will require or that the counsel will be able to compel me to take any course different from what my own judgment dictates in regard to the mode in which I shall present this case to the Senate. It is a thing which does not admit of compulsion. I shall open it as I think the case requires and demands, to the very best of my judgment and ability; and I think the Senate will grant me the indulgence of being satisfied with that. If it is a failure or a weak opening the counsel on the other side will have the advantage of it. But I do not believe that either the counsel or the Senate will undertake to compel me to spend more time than I desire in the opening of this case, or curtail me in any reasonable statement which I desire to make in respect to it, or that they will undertake to regulate the mode or method of and speech in any manner whatever.

Mr. SMITH: May I ask the Clerk to read the resolution under which the argument is to proceed?

The Clerk read the resolution as follows:

"*Resolved*, That in the argument of the case of the People against the County Judge of Oneida County, one counsel for the prosecution be heard in opening the case for the People, and that one or two counsel be heard for the respondent in reply, and that one counsel for the prosecution be heard in conclusion; and that the 8th day of January inst., at 3 o'clock P. M., be fixed as the time for the commencement of the argument, and that the same and the further consideration of the case be continued from day to day, beginning at the hour until the matter is concluded."

MR. SMITH: That resolution was introduced by Senator Folger, and it was after the consideration had been suggested to the Senate that in a case like this, involving such important questions to this respondent, the order of argument as suggested in the resolution would tend in the highest degree to present the claims upon the part of the prosecution and the answer that the respondent might make to the charges. It was suggested then, when the Senate voted upon the question, and it seemed with that consideration in view, that this was analagous to the uniform practice of every court in this State. In the Court of Appeals, the prosecuting party, the appellant, holds the affirmative and presents his case to the consideration of the Court. The respondent answers, and the appellant is heard in reply. That is the practice which prevails in the General Term of the Supreme Court of the State of New York, and every where, so far as I know, with the single exception of an argument on a question of fact before a jury; and when the learned counsel says that there is a proposition here to institute a new practice, he certainly forgets that without a single exception in any court of this State or any where else, so far as we are informed by experience or by reading, this point has never been disputed. It was in that spirit that the Senate passed this resolution, and called upon these gentlemen who came here to accuse and seek to convict Judge Smith, to come out squarely and fairly and state their case, and put forth their arguments to the end that they may be answered. Now we are told that this resolution is not to be complied with, and that the requirement of the Senate will be answered by this printed brief which has been handed up here. Need I say to any lawyer that this brief suggests nothing? No one, from it, can ever surmise upon what testimony they rely to prove their points. Let me read the second point on the brief, and see how much information will be communicated by it.

"The first and second charges are of extortion; of a violation of the statute prohibiting a Judge to draft papers to be used in his court; and for allowing his partner to practice before him."

This is not quite as plain as the printed charge. It does not give us quite as much information as we had before the roses were in blossom last summer. Then comes the authorities, "Constitution of 1846, article vi, section 20; Laws of 1830, chapter 320, section 38; Laws of 1857, chapter 564, section 1; Laws of 1847, chapter 280, section 52; Laws of 1862, chapter 477; section 298; 4 Blackstone's Commentaries, 141; 1 Hawkins' Pleas of the Crown, chapter 68, section 1; 6 Cowen, p. 661." Then there is a reference to certain pages of the printed case of the proofs. That is the second point, and this is the opening argument upon that point to which we are to reply. Now turn to page 5, and we have this: "Smith's conduct," and then follows a quarter of a page of figures, referring to pages of the printed case, and not a word else. What information does that afford us? None at all. Then the counsel says further, that this attempt on our part is "sinister"—I think that is the word he used—that our motive is "sinister." Well, I do not know exactly what signification he gives to the word, but he says that it is an attempt to "regulate and control the order of this argument." Not the least. We have no desire to interfere with the argument. We are willing he should take as long time for it as he pleases. All we ask is that they shall state their case and state the grounds upon which they rest their claim, and not give reference to 450 pages of a printed case, on which they rely, and only giving us a chance to answer that. Humble people as we are, I think we can answer their case. But he says he never, in all his life, has heard of a criminal case where this thing was claimed. Does the learned counsel mean to claim that this is a criminal case, and that this proceeding is a criminal trial? I can cite an authority—one which I think the learned counsel must respect. The learned associate of the gentleman, in his opening, said: "This has been called in the papers"—the newspapers, I suppose he means—"a court of impeachment. It has been called 'the trial of Judge Smith.' I desire to say that it is neither the one nor the other." Certainly the gentlemen who appear as counsel for the prosecution are not in harmony. The learned counsel from Utica tells us that this is not a court of impeachment, or even a trial; the other claims that it is a criminal trial, and that the precedents we must follow here are those that prevail in criminal

cases. I submit to this Senate, as due to this respondent, whether it take a little time or much (and as far as I am concerned I desire to take but little time in the argument of this case on the facts), that it is fair to require of the learned counsel that he shall state his case, and bring forward the proof upon which he relies, before the case is argued upon our part. What earthly objection can there be to that? What can there be "sinister" on our part in asking to have a regulation of this sort, if the counsel desires that this respondent shall have his case fully argued? Is it just and right to require of us that we shall anticipate, as far as we can, the proof upon which he relies in this book of 450 printed pages, and when we shall have taken our seats, he argue from this brief some point which may not have occurred to us, and we and Judge Smith not be allowed to be heard in reference to it? Has all this time been spent to get out the evidence and present these facts, and has the time now become so precious in the closing scenes of this trial that an opportunity is not to be awarded to this respondent, in every way he can, to bring forward all the proofs which will, in our judgment, vindicate his innocence of the charges? And, putting it upon the grounds of magnanimity, is it generous and fair in these gentlemen to decline to make their argument—to decline to present their considerations to this Senate now, so that we can reply to them? Then there is another consideration. The gentleman says that if, by chance, he should forget something in his opening argument, we desire to close his remarks. By no means. So far as we are concerned we desire no such thing. We ask that the practice shall be just as it is in all the courts every where. If the gentleman should omit to state a point in his opening argument, he can do it in his closing remarks. I know that the counsel is just and fair in his ordinary transactions with the members of the profession; and I should be entirely willing to trust to his judgment as to what is a fair and legitimate opening argument in this case, under the direction of the Senate. But does this brief which he has furnished us comply with the direction that the counsel shall make a full argument of his case for us to answer? His learned associate made an elaborate argument in opening the case, in which he made extensive quotations from Blackstone, Story, and other eminent jurists, and to which he says he now refers us. But that fails to allude to the particular items of evidence upon which they rely, and it could not allude to them because the evidence had not then been given. And, again, I

think I can assert, though others have examined the question with more care than I have, that everywhere the practice has been uniform in these cases, that the opening has been fully and elaborately made by the prosecution, that then the respondent has been awarded a reply, and then the prosecution closes.

Mr. SHAFER: My learned associate has shown the ordinary practice of the Courts, requiring the counsel for the prosecution to pursue the course indicated by the resolution. In reference to cases of this character, the practice is even more fixed. The trial of Prescott was one of the most ably conducted of all the suits of this character ever known in this country. And it will be found in that case, that after the evidence was closed, two counsel, consisting of two of the managers, argued day after day as well upon the law as upon the facts, to show that the respondent was guilty, Then two counsel, one of whom was Mr. Webster, argued in favor of the respondent, after which, Mr. Shaw—afterwards Chief Justice Shaw—the third manager, closed the argument in behalf of the prosecution. That was the course of proceeding in the case of Prescott. Then we come down to the trial of Judge Peck. After the evidence in that case was closed, Hon. Ambrose Spencer commenced his argument for the prosecution, which will be found at page 288 of the printed proceedings, and which continue to page 305. He was followed by Mr. Wickliff, whose argument continues to page 327. Then follows the argument on behalf of Peck, one made by Mr. ——, and the other by Mr. Meredith, occupying four days in their delivery; and finally Mr. Buchanan, the third manager, closed the case on the part of the prosecution. Then we come to the Mather trial in this State, and one of the most important in this country. In that case you will find that after the evidence was closed, the Hon. John K. Porter argued in behalf of the prosecution. Then two counsel, Judge Peckham and the Hon. John H. Reynolds argued the case in behalf of Mr. Mather, and finally the case was closed by the argument of the Hon. Orlando Hastings, on the part of the Assembly. Thus it will be seen that the practice has been uniform in these cases, not to serve a printed brief of five or six pages upon which to base an oral statement of fifteen minutes in length, but to argue the case at length and in full, as well upon the law as upon the facts, and thus present in an intelligent form the views which the prosecution entertain in reference to the charges preferred against the

respondent. I submit that there cannot be found an exception to this course of proceeding.

The motion of Mr. Smith being submitted to the Senate, the President declared the same lost by the following vote:

YEAS.—Messrs. Chambers, Collins, Kline, Pierson and Stanford, 5.

NAYS.—Messrs. Barnett, Campbell, E. Cornell, Crowley, Godard, La Bau, Lent, Platt, White, Williams and Wolcott, 12.

ARGUMENT OF MR. SEDGWICK FOR THE PROSECUTION.

Mr. SEDGWICK, in behalf of the prosecution, addressed the Senate as follows:

MR. PRESIDENT AND SENATORS: The first question which arises in this case is a legal question, and which involves the constitutional powers of the Senate upon the subject of removals from office; and we claim, under that point, as was fully stated and elaborated in the opening of my learned associate [Mr. WATERMAN], that the Senate has the power to remove county judges, upon the recommendation of the Governor. Upon this portion of the constitutional power no question is raised. We shall contend, as we have, that the power is concurrent with that of impeachment, so far as regards impeachable offences; in other words, we shall contend that the Senate, under this proceeding, without being compelled to resort to an impeachment and a trial, with the forms, ceremonies and delays attendant upon an impeachment, has a right to use this more summary method for the removal of an officer under the Constitution. In the language of this printed paper, we held that the power of removal is concurrent with that of impeachment, so far as regards impeachable offences. We claim, also, beyond this, that, whereas, impeachments are limited to official misconduct and high crimes and misdemeanors by the language of the Statute, and restraining of the Constitution, under this branch of the Constitution a person may be removed for any cause short of criminal conduct, and short of even official misconduct, which the Governor, in his discretion, thinks authorizes him to recommend a removal, provided the Senate concurs in that recommendation, after trial, in which the respondent has the right to be heard, and are satisfied with the reason assigned by the Governor for removal. In other words, we claim, under this clause of the Constitution, that the Senate may try a man's fitness—

his moral, his physical and his intellectual fitness for the place which he holds; and if they find him unfit and incapacitated to discharge the duties of his office, or that it is likely to produce public injury to continue him in office, it is their duty to remove him, and this independent of any question of criminal misconduct. And, upon this point, I shall cite the case of Prescott, to which the counsel has alluded, although that was a trial by impeachment, with the concession of the counsel upon both sides, that the power of removal under a joint legislative address, which takes the place of removal upon the recommendation of the Governor, by the Senate, extends to all cases where, in the discretion of the two branches of the Legislature, it is regarded as a proper case for the exercise of power. Now, the whole branch of this subject has been presented in the opening argument of my learned associate, Mr. WATERMAN, and has been before the Senate and before the counsel for the respondent for months past; and I could not excuse myself for consuming the time of the Senate in repeating what was then said or in citing authorities upon that point. Therefore I shall content myself, so far as that branch of the case is concerned, with answering such arguments as may be adduced upon the other side, as intimated by the counsel who opened for the defense, to show that this case, if it fall short of official misconduct, is not one for removal. That idea, and any illustration or elaboration of it on the part of the other side, I shall contest as I may feel at liberty to do, after the close of the argument of the respondent's counsel. And now as to the charge: The first and second charges (which will be found on pages 158 and 159 of the printed case), are in substance that the respondent drew up exemption papers for applicants and received pay for it, in cases which were to come before him; and that he allowed his partner, Mr. Utley, to draw up such papers and receive pay therefor. I contend that the facts proven—and which are not disputed—establish three separate charges: First, extortion; that is the taking of money by a judicial or any civil officer which he has no right to take, or taking more than he has a right to take, where any fee is allowed him by law, or taking fees before they become due, payable to him as an officer. Either of these things is extortion. It is a misdemeanor at the common law, and it is a misdemeanor under the statutes of this State. I have cited authorities to show that, and the references will be found upon the points. Blackstone's Commentaries, Hawkins' Pleas of the Crown, and the

cases I have cited are full upon this point, that for extortion (and we have proven that he is guilty of extortion here) he is liable, both under the common law and under the statute, as for a misdemeanor, and might be impeached for the same reasons which we have urged against him in this charge. A judge is deprived, under the Constitution (Art. VI. Sec. 20), from taking any fees of office, with the exception of such fees as a justice of the peace or commissioner would be allowed to take for similar services. In the cases referred to in these charges, the judge, if he chooses to draw papers for and swear an applicant to his statement, may charge what a justice of the peace may charge, which is twelve and a half cents, for administering an oath. Whatever he takes beyond that he takes against the law and the Constitution, for which he is guilty of extortion, and is liable to indictment, and to be removed from his office by the Senate; in other words, extortion in a judicial officer is a crime worthy of removal. And as to the second charge, that the respondent allowed his partner, Mr. Utley, to draw up these same exemption papers and receive pay therefor, that is also a violation of the statute, which prohibits the partner of a judge from practicing before him, not only in his court but in any judicial proceeding before him as a judicial officer—any proceeding upon which he is to pass. The mischiefs of allowing such a practice is apparent to anybody. If the partner of a judge is to be allowed to practice before him in a court, or in any proceeding before him, the danger would be that the partner would be uniformly successful. The bias of the mind of the judge would be such as would favor his partner in proceedings instituted by him, and the result would be that justice could not be done, and the public interest would not be protected. If his partner may appear in these cases, or in another case referred to in another charge, he may appear also in insolvent cases, and he may appear in all the proceedings out of court which are within the jurisdiction of the county judge. Great mischief would result to the people by allowing such a practice. The second of these charges sets forth a violation of this statute. We have cited the statute and the proofs upon that point, which are entirely undisputed, and are referred to with the numbers of the pages in the printed case upon which they are found. The allowing of his partner to practice before him, and the drafting of papers and receiving pay therefor, are within the very letter of the prohibition of the statute; and of both these things the respondent is proved to have been guilty—that is, of

allowing and permitting the violation of a known law of the land, which is also declared to be a misdemeanor. The proof upon this subject is admitted; but the respondent says by way of excuse, that he was ignorant of the statute—that he did not know what the law was, and therefore he is not to be held responsible for these offences. Upon that subject I have cited authorities to show what every lawyer and every citizen knows, that ignorance of the law is not an excuse, although ignorance of the fact may sometimes be an excuse for crime; as, where a person whose house is entered, supposing that the party entering is a burglar, shoots him, though he turns out to be an innocent person. That is a case where the act is excused, because there was no intention to commit a crime; and an ignorance of the facts, in a case of that description, will excuse him when an ignorance of the law will not. We shall contend further upon that fact, admitted and established by the testimony of Judge Smith, that although he denies he knew this law and knew that he was violating it, yet, as matter of fact, his denial is not true, and that he knew of this statute which he was violating; and that he has added to the crimes with which he is charged in these papers, that of knowingly testifying here to a state of facts, for the purpose of presenting this argument, of ignorance of the law, which he knew was not true. The third and fourth charges, which will be found on pages 159 and 160 of the printed case, are charges of using his official position to obtain the office of prosecuting attorney to the Excise Board of Oneida County, and then selling that office for money, and also of offering the place to another on condition of his entering into partnership and sharing the profits of the office with him. We shall contend in respect to those cases, that it is official misconduct, and that if it is considered by the Senate to be the selling of an office, within the meaning of the statute, it is also a misdemeanor; and that, at all events, whatever view may be taken of the law, it is official misconduct. It is using his place—using the influence of his position for the purpose of obtaining office, and displacing a man whom he concedes to be competent, and afterwards selling the office to him for his own private advantage. That, we say, is an undue use of his official influence, and is official misconduct, and is therefore liable to the condemnation of the Senate under these proceedings; and on that point I shall cite the authorities to which I have referred. And upon this subject, also, there is no real controversy in respect to the proof. It stands upon the

testimony of Judge Smith and his various explanations of it—the evidence which he gave in the court martial proceeding against Haddock, which he explained two or three times on that proceeding, and which he subsequently attempted to explain upon this trial—and the evidence of Weaver and Reynolds, the commissioners, all of which will be found upon the pages referred to in the brief presented. The fifth charge, which refers to the case of bailing Norton, will be found on page 160 of the printed case. It is a charge of official misconduct in letting a criminal to bail from improper and corrupt motives, and procuring an order from Major Haddock, the Assistant Provost Marshal General, to have Norton's local bounty paid to Mr. Utley, the respondent's partner; and also for allowing his partner, who, in contravention of the statute, to which reference is made, he allowed to appear as counsel before him, when acting judicially in the proceeding. Upon this subject, I will say that while we concede that it became a practice—I do not say a good practice—to such an extent as might justify or excuse a judge for allowing criminals to be enlisted in the armies of the country, yet the evidence here is such as will not admit of excusing a judicial officer for letting a person to bail under the circumstances detailed in this case, for an improper, corrupt and impeachable motive; and it is that part of the transaction of which we complain, and which we shall call upon this Senate to set the seal of their disapprobation upon. The sixth charge is substantially a recital of the conduct of Judge Smith in his relations with Aaron Richardson, a bounty broker, and with Haddock, a public officer in the military service of the United States. That charge is recited at length, with all the specifications and particulars upon which we rely. The charge will be found in pages 160 to 167 of the printed case. It contains a recital of the evidence upon which the charge is founded. We shall claim (and we call the attention of the counsel upon the other side to it, for the purpose of informing them as to the position we shall take in respect to this charge), that the proof shows gross misconduct and immorality; in other words, it is a charge of personal and social misconduct; and we shall claim it comes within the power of the Senate, under the Constitution, to take notice of such officers; and if they think it unfits the judge for his official position, they shall remove him from it. In the next place, we contend it establishes a case of deceit and collusion on the part of this respondent as an attorney, n respect to his client, and a betrayal of the case of his client to

one interested against him, which, by the statute I have cited (2 Revised Statues, section 298), is a misdemeanor. It is a crime by the law of the land for a man to betray his client, to pretend to be the advocate, attorney or counsel, acting for a person who relies upon him in his professional capacity, and then betray his secrets and his confidence to those who are interested against him. We claim in the third place, under this point, that this charge, as proved, shows the collusion of the respondent, Judge Smith, with a notorious bounty broker, whose character was entirely well known to Judge Smith, and his aiding him in his efforts to defraud the Government, which we say is gross immorality, dishonesty and corruption in his personal and social character, and unfits him for holding a judicial position. In the fourth place, we claim that the charge as proved, establishes a case of collusion with a public officer, Major Haddock, known by him to be corrupt, and aiding him in his efforts to defraud the Government, and aiding him also in his efforts to suppress the evidence of his misconduct and fraud, to get it out of the way so that Haddock might not be called to account for his m. conduct. In commenting upon this charge, I have cited several places in the printed case to show that the character of the witness by whom these transactions are proved—(and the witness is the respondent himself)—is such as shown by his contradictions, his attempted evasions, and his acknowledgements of facts which indicate corruption and venality, as to authorise this Senate to take this case as made out most strongly against him by his own evidence. Where he denies a thing, which is apparent from the general tenor of the testimony to be true, we shall find that thing to be true, notwithstanding his denial. In respect to his knowledge of Richardson's character, we shall show from his own testimony that he knew he was corrupt, and knew he was engaged in an occupation which was prejudicial to the public interest, which was a fraud upon the community, and which tended to weaken and destroy the Government, which attacked it in its most vital part, and Judge Smith, in efforts to obtain facilities for such a man, in aiding him in his business, colluding with him, was dealing with a subject and with a person whom he knew from the outset was corrupt and rotten to the core. In respect to Judge Smith's conduct, we shall show on the pages of the printed case specified, that it was as the charges point out, and that it supports in detail,

step by step, the allegations contained in the succeeding charge. I need not stop to refer to or to read from the proofs. He shall stand or fall by his own testimony in respect to this sixth charge. The seventh charge, at page 167, is founded upon the same testimony as the sixth, and it is a specific charge of attempting to bribe a public officer of the United States. By the act of Congress of 1863, referred to in Brightly's Digest, it is made a misdemeanor and high crime to attempt to bribe a public officer of the United States in any of its departments.

MR. SHAFER: I would like to enquire whether you claim it is a felony, according to that Statute, to attempt to bribe?

MR. SEDGWICK: It is declared to be a high misdemeanor. I claim it is precisely what the statute says it is—a high misdemeanor to attempt to bribe a public officer of the United States in any of its departments—civil, military, naval, judicial or other department of the government; and Judge Smith, as proved by the evidence in this case, did make a direct attempt and offer to bribe an officer of the government. The eighth charge, founded upon the same testimony, is a specific charge of attempting to suppress evidence of the misconduct of a public officer, which was gross misbehavior in this respondent, if not a crime. I think it is a crime and, indictable at common law as a misdemeanor. At all events, it is such misconduct in an official person as justifies removal. The ninth charge is founded upon the same proof, and is a charge of neglect of official duties by going personally into the business, or attempting to go into the business of a bounty broker, and aiding and assisting a notorious bounty broker in his transactions. The evidence shows that, from the last of December, when his friend Haddock was appointed assistant provost marshal general, up to the time when the business was arrested by the arrest of Haddock, the public business of Oneida county was sacrificed by this judge to this business of defrauding the government in the business of enlisting soldiers into the army. These are our views, I think, so expressed that the counsel upon the other side may understand what this case proves and establishes under the various charges which have been preferred, and the evidence upon which we rely to maintain these charges, is, almost entirely the testimony of the respondent himself. And, if these charges are established to the satisfaction of the Senate, I have no doubt they will find it within their power, as it is their duty, to remove this judge from office.

ARGUMENT OF HON. IRA SHAFER FOR THE RESPONDENT.

Mr. SHAFER, in behalf of the respondent, addressed the Senate as follows:

MR. PRESIDENT AND SENATORS: I never was more embarrassed in my professional career. I undertake to say that any person who is familiar with the trial and argument of causes, and has witnessed what has transpired here this day, will agree with me that the position I occupy is a peculiarly embarrassing one. When lying upon a sick bed in New York, I learned that a resolution had been adopted by this body that the argument in this proceeding be commenced this day, and that the order of argument had been so arranged that the counsel for the prosecution should open the argument, that two counsel should then be heard in behalf of the respondent, and that one counsel should close the case for the prosecution. Although not very old, I have spent a few years in the practice of the law, and have looked with same little dilligence at the impeachment cases as found in the books and as conducted by learned tribunals—giants in the law. I thought I knew what an "opening" was; and I thought I should have an opportunity of listening to an opening argument, and gather, as well as my feeble intellect could gather, the views which would be enforced by this prosecution upon this evidence, and by which they would claim this respondent should be removed from office. And when we were served, five minutes before this session commenced, with these points, containing five or six pages of print, with references to a voluminous mass of evidence, and when the counsel started off, by saying he should simply state the points and reserve his main argument for the conclusion, I thought it was due that he should state their case more *in extenso*. With that view we made the motion we did, and that motion has been denied. We shall, therefore, go on, as we are compelled to now, with our argument. The learned gentleman has not occupied twenty minutes in delivering the opening argument in a case, to take the evidence in which required days and days. Hence we are compelled to grope about in the dark as to any knowledge of the view which he proposes to enforce upon this body from the evidence. Hence, I say, the position I occupy is the most embarrassing one ever occupied by counsel in a case instituted for the removal of a person from office, or for the impeachment of an

officer. It is not justice to this respondent. The opening of the counsel is not such an one as was contemplated by the resolution. When the Senate adopted the resolution, that the counsel for the prosecution should open the case, they intended that he should open it in the ordinary way, and not claim to do so, and claim it is a legitimate argument to produce and read a printed brief, with a citation of authorities and a reference to the facts. But such is a convenient opening for the prosecution. It is an opening which enables them to conceal any important view in reference to evidence and the inferences to be deduced from it, until they have heard the arguments of both counsel for the respondent, and then the prosecution will address their argument to the Senate. It is an absurdity to call the remarks of the counsel an opening, and to insist that we can anticipate the claims which the prosecution will make in reference to this evidence. Shall it be charged to our account this unexpected course of proceeding? Are we in a position to follow these references through hundreds of pages of print to try and infer what view of the evidence the prosecution will try to enforce? Look at the references under the fourth point and under the fifth point—when page upon page is referred to, and yet, without a laborious examination, which it would require days to accomplish, the references are meaningless, and, what he shall claim, the counsel reserves for the concluding argument, when it will be too late for us to reply. It is scarcely worth while to complain of the action of the Senate by which they have refused to compel the counsel to enlarge their argument in conformity with what we conceive to be the intention of the Senate in passing the resolution. It is the province of the Senate to act as they deem fit, and we have no right to complain, although I do think, there being many members now here who did not hear the evidence, it would be conducive to the ends of justice to require that the prosecution should open the case with some degree of fullness and particularity. We have even now a bare quorum, and we think that is another reason why he should have been a little more elaborate in his opening. I say a bare quorum; and that is a matter of regret to this respondent. I do not complain of it, except as it may result in injustice. This body, during this whole proceeding, has rarely had present more than seventeen of its members out of thirty-two, and the composition of that quorum has, from day to day, been shifting like the sands of the sea. One member steps out, and

another and another steps in, and hardly any member has been present during all the proceedings. It is under circumstances like these that the gentleman has made a twenty minute opening, and it is claimed that that is a compliance with the resolution adopted by the Senate. Notwithstanding, the Senate has refused to compel the gentleman to open his case in full, I shall claim the attention of this Senate during whatever time may be legitimately consumed upon the part of the respondent's counsel in answer, not to what we have thus far heard, but in answer to what we may anticipate he will address by way of reply. And, first, I desire to call the attention of the Senate (because we dispute their propositions of law) to what was said when a motion was made to submit this proceeding at an early stage of this case. I had the honor to submit an argument upon that question, which will be found in the printed proceedings in this case on pages 8, 9, 10 and 11. I do not propose to go over that ground now. I simply desire to call the attention of the Senate, at this time, to what I said on that occasion, at the foot of page 10, and which I will now read:

"What I aver is that the power to remove judges of the Court of Appeals and justices of the Supreme Court and county judges by this process, is concurrent with the power on the part of the Assembly to impeach. In other words, the county judges are liable to be removed by impeachment if the Assembly see fit to adopt that course on the prosecution rather than to submit charges to the Executive. We say that the remedies provided in section 1, of article VI, and those contained in section II of the same article are concurrent and not exclusive. Justices of the Supreme Court and judges of the Court of Appeals may, by concurrent resolution, be removed from office as specified in section 11, for the same causes, and the same causes only as would justify their impeachment, trial, conviction and punishment under section 1. Why is this so? If a judge of the Court of Appeals or a justice of the Supreme Court is removed by concurrent resolution it must be for official misconduct. If he is impeached by process of impeachment on the part of the Assembly and is convicted on trial in the court for the trial of impeachments, the judge is removed from office; and there may be superadded a disqualification to hold office, and the party be liable to punishment as in other cases. So a county judge may be removed by the Senate on the recommendation of the Governor for the same cause as would call for an impeachment by the Assembly."

Then I advance the following conclusions:

"*First*, the Governor must recommend the removal of the

respondent; *second*, the removal must be for cause; *third*, the cause must be such as would justify the impeachment of the respondent."

I have no doubt that the Senate recollect the provisions of section 1, of article VI of the Constitution, which providest hat the Assembly shall have the power of impeachment, and for the organization of a court to try parties thus impeached, called the court of impeachment. There is no cause for impeachment defined in that section. Then comes section 11, which provides that "justices of the Supreme Court and judges of the Court of Appeals may be removed by concurrent resolution of both houses of the Legislature, if two-thirds of all the members elected to the Assembly, and a majority of all the members elected to the Senate concur therein. All judicial officers except those mentioned in this section, and except justices of the peace and judges and justices of the superior courts, not of record, may be removed by the Senate, on the recommendation of the Governor" &c. What I contend for under these two sections is this, that for the same cause for which you would remove a justice of the Supreme Court or judge of the Court of Appeals, by concurrent resolution under section 11, you can impeach him under section 1, article VI; and for the same cause for which you would remove a county judge under section 11, of article VI, articles of impeachment could be presented by the Assembly in which he would have to be tried by a court of impeachment;—or to state it again, that the remedy by removal provided by section 11, of article VI, is concurrent with the remedy by impeachment and not exclusive. I argue and insist that no judge (unless it be for some cause which has never been met with in impeachment cases,) can be removed for a cause for which he cannot be impeached under section 1, of article VI of the Constitution. My learned friend substantially concedes this in the points. He says that "the Senate has power to remove county judges upon recommendation of the Governor," and that "the power is concurrent with that of impeachment, as regards impeachable offenses." But then he launches out into a field for which he has no warrant. He says that this power of removal "may also be exercised beyond this in any case which the Governor, in his discretion, thinks warrants a removal, provided the Senate concur, and the causes assigned for removal are proved to the satisfaction of the Senate." If this last proposition is right, you can remove this judge or any other judge for any other offense

than would justify an impeachment, the boundaries of which offenses cannot be imagined or circumscribed. But I am glad of even the concession he has made; because, notwithstanding the eulogy which the learned counsel pronounced upon the opening argument of his associate [MR. WATERMAN], at an early stage of this proceeding, we will find there is a material difference between the proposition advanced by the learned counsel in this printed brief, over which he could not have labored a great while, and the proposition advanced by his associate in his elaborate opening. The junior counsel for the prosecution [MR. WATERMAN], as has been stated by my associate, used this language: "This has been called in the papers an 'impeachment.' It has been called the 'trial of Judge SMITH.' I desire to say it is neither the one nor the other; and what we ask is simply the removal of an officer from the position of trust that he holds." It is not a trial nor an impeachment they say, but it is a simple request "*we* ask." Who are "we?" They are not the Assembly. There is no prosecuting officer who asks it. It is not even asked by the Governor or the constituted authorities of the State. But "we" ask his removal from the position of trust which he holds. Would it not be strange to remove a senator from his position because "I" desired it. Suppose "I" desired to remove the distinguished gentleman who succeeded me as a member of this body by reason of his getting the most votes [laughter]; would that entitle you to remove him? "It is not an impeachment, it is simply that we ask that this judge be removed," says the junior counsel [MR. WATERMAN]. We will see how far that doctrine can go. Let us refer to what the senior counsel [MR. SEDGWICK] said:

"They need not be impeachable offenses. There is nothing in this section which requires that the offenses should be impeachable offenses. He recommends his removal for cause, as was specified in the Constitution of 1822. There it provides that the causes are to be stated on the recommendation of the Governor. Here it provides no such thing. The charges are to be communicated, and they are to be tried by the Senate, and not by the Governor, and need not be impeachable offenses."

Now I have shown that according to the opening argument of the junior counsel, he regarded this as merely an express desire on their part for the removal of this officer from a position of public trust. On page 187 of the printed case, the junior counsel was

"His removal is the expression of the will of the people possible,

the incumbent does not possess those mental, moral, physical and political qualifications necessary to the proper discharge of these duties, or that the public interest would be more carefully guarded in the hands of some other person."

Then on page 195, he says: "Every case which calls for surgical treatment does not require the knife." In other words, it is not necessary in every case to resort to an impeachment, but that by the "will of the people" a judicial officer may be removed. That is their theory, that a judge who now holds his position for the second term and has served acceptably as a public officer, shall be removed by that indefinite process. What we say is, that he can be removed only for the same causes for which he can be impeached. The Constitution of 1846 being silent as to what constitutes impeachable offences, it becomes the duty of the Senate to look at previous Constitutions and the practice in cases heretofore, to learn what would have been regarded as impeachable offenses, for I submit that it can never be tolerated in any government pretending to be a government of laws, that power has been conferred upon this Senate, or that it can arrogate to itself the power of removing a justice of the Supreme Court or a county judge at pleasure; yet the opening of the junior counsel alleges this power to remove, not for cause, but at pleasure. It will never do to adopt a precedent which will say to every elected judicial officer in the State except justices of the peace, "we can remove you, provided the Governor will say he does not know whether you are guilty or not, but recommends the removal, though no proper disqualification is shown." When such a precedent is made, the people will instruct this or any other body that it does not possess power of such a character. I would ask the counsel to explain for what cause you would remove a judge by concurrent resolution for which you would not impeach him? The remedies are different, but the course must be the same. You cannot say to one, "you are in one forum, and we will impeach you for one offense," and in the other forum, "you are to be reached by way of removal for another offense," and, as the Constitution of 1846 is silent as to what constitutes impeachable offenses, so it is silent as to what constitutes a ground for removal under Section 11, of Article VI. You can find nothing in the Constitution which states the causes for which a judge of the Court the sa[illegible]eals, a justice of the Supreme Court or a county judge may you can [illegible]ed. And, according to the argument on the other side,

if the county judge of Oneida county wears his hat in a particular way, or his pantaloons are not made according to the modern cut, you may remove him, because there is no definition given of the causes for which he may be removed. In the fact that no definition is given of what is an impeachable offense, the Constitution of 1846 differs from the previous Constitutions of this State, they both providing that removals might be made for specific cause—to wit: "mal, or corrupt conduct in office," or "high crimes and misdemeanors," and the present Constitution being silent, what is the well settled rule of construction? I submit to every lawyer, with great confidence, that where there is no definition of impeachable offenses, nor any statement of the grounds for removal in the Constitution of 1846, we should look to prior Constitutions, and prior legislation, and prior action in State cases, to determine for what causes public officers were to be and have been removed. Is it to be said that within a few hours we have gained more experience and knowledge as to what constitutes a ground of removal than was acquired by those who preceded us in past ages? Or shall we look to what has gone before us? Let us again refer to the junior counsel's opening. He says on page 195 of the printed case: "The statute has not defined these words [that is high crimes and misdemeanors], and the history of impeachments in this country, in the Federal and State Courts, shows that the attempt to define an impeachable offense has hitherto proved a failure." Although impeachments have existed for centuries in England and state trials for impeachable offenses have been had ever since the organization of the General Government, and learned men have stated what should be impeachable offenses, yet we are told by counsel that these offenses were not defined because it was impossible to define them, and that the matter has thus been left for some Senate or some court of impeachment to spell out what shall constitute a cause for removal. And with this "impossibility" of definition by the convention which framed the Constitution of 1846, stated by the counsel, it certainly was not a little modest in him to attempt to define it. But it will be found as we progress that it was defined in the Constitution of 1777; that it was defined in the Constitution of 1822; that it was defined in case of Peck, and in the case of Prescott and other impeachment cases, and in various trials which have been had in the Federal and State Courts. Nevertheless, the junior counsel says it was not defined in the present Constitution because it was impossible,

and being impossible, he attempts to enlighten us. Speaking of the office of county judge, he says:

"It was established for purposes of the highest public good. Has it been administered for purposes of the highest public good? It was established and should be filled so as to give dignity, strength, purity and energy to the administration of the laws. Has the character of the incumbent, private and official, and his discharge of the duties of his office been such as to give dignity, strength, purity and energy to the administration of the law? This is the text, and if, in the exercise of your calm, unprejudiced and deliberate judgment you, can say, upon the testimony that will be spread before you, that the conduct of the county judge of Oneida county, and his administration of the duties of his office, have been thus pure, honest and faithful, we would be the last persons on earth to ask for his removal. Is this text too stringent? Shall nothing be pardoned, in the language of my friend, to the imperfections of human nature? Yes, much. But what, if we show you that this respondent, not once or twice, but habitually, treats this office and its duties but as stepping stones to the advancement of his private attachments; that he uses the power and influence which the people have entrusted to him for their good, for his own individual profit. But to return: The text I have given by which to determine in any case as to the necessity, wisdom and propriety of the removal of any officer from his trust, I have said, was the only one that could be applied."

This text, which he has given, is the only one that could be applied! "Has his administration given dignity, purity and strength to the administration of justice?" If it has not, he is removable; if he has, he is not removable. Such a text is one that was never dreamed of, except in the brain of some lawyer who may have sat down and theorized upon the subject matter of removal from office. The counsel abandons the rules which have hitherto been established by the courts for the conduct of prosecutions, and has instituted rules of his own. He says, first, you are not a court of impeachment; second, you are not tryers, and this is not a trial; and, third, if this man has not given purity, strength, dignity and energy to the administration of justice, then remove him. I suppose that, if you did not give purity, strength, dignity and energy to legislation, it would be a ground for your removal. The text is so broad that he could engulph with it all those who could not come up to his idea of purity, strength, dignity and even energy. There are various kinds of energy. There is a well directed energy and an ill directed energy; there is a laudable energy and a despicable energy. What kind of energy does the

gentleman mean? Does he mean that kind of energy which would step from the bench and flog you on the spot; or that energy to which the district attorney of Oneida county refers in his testimony, manifested by this respondent in holding every court, except one, when he was prevented by being upon the sick bed. The counsel talks about the respondent's private character; there is an allusion in these points to which I will refer by-and-by. I am surprised that the senior counsel should have stated that the respondent was guilty of drunkenness. I challenge him to point out a particle of proof, in this case, to show that this man was ever under the influence of intoxicating liquors. Public officers have been seen, week after week, reeling down our streets, drunk, and, yet, no charges have been made against them, nor has any one sought to impeach or remove them. I will contrast Judge Smith's public and private character with that of nineteen-twentieths of the public officers of this State and Nation, and with no fear that his character will suffer by it. Now, this remedy is resorted to, it is said, not for the purpose of punishment, but for the mere purpose of removing an officer from an office which it is alleged he is no longer fit to hold. When we bear that in mind, we must readily see that his removal must be for some cause. The practice has uniformly been to remove officers because of some alleged official misconduct. Upon that point I will call the attention of the Senate to Cushing on Parliamentary law, section 2539, and Story's Commentaries on the Constitution, sections 400, 401 and 402. I will not read the authorities referred to, but trust to the Senate to do so. Nor shall I undertake to discuss the oft mooted question in cases of this kind, whether the offence which would justify an impeachment must also be indictable. Any one who is at all anxious to investigate that subject will find it fully discussed in the trials of Pickering, Chase, Peck, Prescott, Addison, Shippen and Mather. This, however, we do claim that it is held in these cases that, to constitute an impeachable offence, the officer must have violated the provisions of the Constitution or some known law of the land. If I am right in my theory, that, in order to remove this man, he must have been guilty of some impeachable offence, or some offence which has been regarded as good grounds for removal, then I undertake to establish the proposition that heretofore no man has ever been removed, whether by impeachment or otherwise, unless he has violated the provisions of the Constitution, or some known law of the land. I hope

I will be pardoned for referring to this matter somewhat in detail, for I cannot be as brief, as was the learned counsel [Mr. SEDGWICK] in his opening. The case of Prescott was one which grew out of charges against the surrogate of the county of Middlesex, Massachusetts. Mr. Shaw, afterwards Chief Justice Shaw, in replying to the argument of Mr. Webster, said:

"The general principle of law, upon which we rely in support of this prosecution is, that any willful violation of law, or any willful or corrupt act of omission, or commission, in execution or under color of that office, the duties of which the respondent has sworn to perform and discharge faithfully and impartially, according to the best of his abilities and understanding, agreeably to the Constitution and laws of this commonwealth, is such an act of misconduct and mal-administration in office as will render him liable to punishment by impeachment."

It is not *any* violation of law or *any* omission to perform a legal duty, but any willful or corrupt, designed or intended violation; because Chief Justice SHAW is charitable enough, as other managers in impeachment cases have been heretofore, to acknowledge the principle, that to err is human. The learned counsel [Mr. SEDGWICK] has cited cases to show that ignorance of the law will not excuse a person for its violation. But what authorities does he cite—mere criminal authorities—Archibold's Criminal Practice and Pleadings, Russell on Crimes, &c.

MR. FOLGER: What acts of omission or commission are referred to?

MR. SHAFER: The language used is: "The general principle of law upon which we rely in support of this prosecution, is that any willful violation of law, or any willful and corrupt act of omission or commission in execution, or under color of that office," &c., "is such an act as would render him liable to punishment by impeachment."

MR. FOLGER: Does the counsel claim that it must be something omitted which is required by statute, or something done which is forbidden by statute?

MR. SHAFER: As the Senator will observe, I do not go as far as that. There are acts of official misconduct, while in the discharge of duties, which no statute could reach, and for which he could be impeached, such as improper conduct on the bench—drunkenness on the bench, or any thing of that character which is not a violation of any statute. What I mean to state is, that

before he can be held responsible for the acts alleged to have been done in the two first charges, it must be shown that he willfully and corruptly did those acts, and that they were not done inadvertently and mistakenly. I comment upon the extracts because they show with what spirit prosecutions have been conducted in these cases heretofore; and although I must say, that nothing has fallen from the lips of the senior counsel [Mr. SEDGWICK] in this case which would seem to indicate a feeling of acrimony or bitterness, though in the printed points there is an indication of such a spirit. Therefore we desire the gentlemen to point out *in extenso* those parts of the testimony which they think tend to establish the truth of the innendoes and imputations contained in the brief. At page 194 of Prescott's case, Mr. Dutton, one of the managers and one of the most learned lawyers in Massachusetts, uses this language:

"For what offences or crimes, then, may an officer of the government be impeached? By our Constitution for 'misconduct and mal-administration in office' only. It becomes, then, important to ascertain the meaning and import of these words. In the first place they include bribery, extortion, and misdemeanor, which are technical words, well known and defined in law. They also have a more extended meaning, and embrace a variety of official acts which do not amount either to bribery or extortion."

MR. SEDGWICK: There is no dispute about the principle which you have just read.

MR. SHAFER: The particular extract to which I desire to refer the Senate to is this—Mr. Dutton says: "We must make out a clear case of some legal offence—some violation of law, before we can rightfully demand judgment against the respondent." In the case of Prescott, the respondent was charged with habitually taking illegal fees. Year in and year out he had been guilty of this violation of the law. In the case of the impeachment of Judge Peck, Mr. Buchanan was one of the managers; I do not know with what favor the mention of his name will be received by my learned friend on the other side, but certainly at that time Mr. Buchanan was regarded as a very eminent lawyer, and as such he occupied a very distinguished position as one of the managers in the case of Peck. In his argument in that case, he said that they must show a clear violation of the law. This is his language:

"What is an impeachable offence? What is misbehavor in

office? In answer to this question, and without intending to furnish a definition, I freely admit we are bound to prove that the defendant has violated the Constitution or some known law of the land."

In that case there was more ability, and more eloquence, as well upon the part of the managers, as upon the part of the counsel for the respondent, than in any case that has occurred among the State trials in this country. And there the managers admitted that they could not find Peck guilty, unless it was shown that he had willfully and intentionally violated the Constitution, or some known law of the land. And another distinguished lawyer, the Hon. John K. Porter, in the Mather case, expressly admitted the rules of law laid down in the cases of Prescott and Peck to be correct. He started off in that case with the admission that it was incumbent upon the managers to show, not only that Mather had violated the law, but that he had intentionally and willfully, with the law staring him in the face, disregarded it; and that he had willfully omitted to do the duties imposed upon him by law. I say in the next place, that it would seem to follow from the principles already established, to wit: that none but an officer can be impeached, and the impeachment must be for some violation of the Constitution, or known law of the land, that an officer can be impeached only for official misconduct. I want this distinctly observed, and my reason is this: in this case one of the charges is that he was guilty of bribery. It is an offense which is in no way connected with his office; and I desire to inquire whether a public officer can be impeached for an offense which is alleged to have been committed, which was in no way connected with his office. I say that if an officer commits a crime while not engaged in the discharge of his duties in his office, and which has no relation to his office, or the duties thereof, for such violation of law he may be proceeded against in the tribunals of the State, according to the ordinary mode, but he is not liable to impeachment therefor, unless perhaps he has been duly convicted of an infamous crime in a court of competent jurisdiction. That is the distinction I contend for in this case, that if he has been guilty of a violation of the law not connected with his office, if that violation shall be found to exist, he cannot be removed, unless the violation be an infamous crime, and one punishable by imprisonment in the State Prison, and after he has been convicted by a court of competent jurisdiction. The reason of that is obvious, as was shown in an

early stage of this discussion. In England this process of impeachment was resorted to as well to remove an officer from office as to punish him. He might be punished by imprisonment or by a confiscation of his goods; or it may be resorted to for the purpose of removing a party from office, if he is guilty of an offence not connected with his office; and when prosecuted in the ordinary tribunals to conviction, and a certificate is given of that conviction, his office is deemed vacant. The history of impeachments in England cannot aid us in determining this question here; because, as has already been shown, there peers as well as commoners may be impeached in parliament, the former for all offences, whether official or otherwise; and the latter, according to Story, for misdemeanors only. In this country there cannot be produced a single case of an impeachment of an officer for an offence committed by him not relating to his office, whether convicted or not, and on this question let me again quote the language of Mr. Shaw in Prescott's case.

"It is obvious that a person in official station is bound, in common with all other citizens, to obey the laws of the land, and is answerable to the ordinary tribunals for any violation of them. But the Constitution establishes a broad and marked distinction between official delinquency and offenses against social duty. Criminal acts, therefore, may be committed by an officer, of such a nature as to render him liable to an indictment and punishment in the courts of justice, and at the same time being in obvious violation of his official duty, may render him liable to impeachment. Again, other acts may be supposed, which, as breaches of the law, would render an officer liable to indictment and punishment, which, not in any way affecting his official character and duty, would not render him liable to impeachment. The position is equally sound, that acts may be committed by a public officer, in direct violation of his official duty, which would amount to misconduct and mal-administration in office within the intent of the Constitution, and which would, consequently, render the officer liable to impeachment, and yet of such a nature that the ordinary tribunals would not take notice of and punish them, in their usual course of proceeding, and according to the laws of the land, and for which, therefore, the offender would not be indictable. If this construction be true, an act may be punishable both by indictment and impeachment, or the one, or the other exclusively, according to its nature and circumstances. By the Constitution, which is the

law of the highest nature, every officer is bound to take an oath, faithfully and impartially to perform and discharge all the duties incumbent upon him as such officer, according to the best of his abilities and understanding, agreeably to the rules and regulations of the Constitution and the laws of this Commonwealth. To perform these duties faithfully and impartially, he must understand them, and he must use due dilligence to acquaint himself with them. I should therefore hold that any gross and continued neglect of the ordinary means of information, as if an officer were to disregard those public statutes, which are made from time to time, and the knowledge of which would be necessary to the intelligent and proper discharge of the duties of his office, or if the judge of an inferior court should willfully neglect to inform himself of those adjudications of superior courts, which, as precedents, ought to bind and govern him, or in any way should willfully neglect the means of qualifying himself for the faithful and intelligent performance of his duties, such neglect would be misconduct, punishable by impeachment. Perhaps, in this view, the commission of any heinous crime, though not immediately connected with the execution of his office, by utterly disqualifying him, and rendering him incapable of performing the duties of an office requiring dignity, confidence, ability and integrity, might reasonably be construed to be misbehavior and misconduct in office."

Mark the degree of accuracy with which he speaks, and which always characterizes the opinions of that man—that he who is convicted of an infamous offense, although he be a judge, should be removed for the offense of which he stands convicted. Manager Campbell, on Chase's trial, pages 108 and 109, said:

"It must, I think, appear evident to every gentleman who hears me, that the distinction does exist between impeachable and indictable offenses; and that when the Constitution declares that the officer may be proceeded against by indictment, it must mean in offenses not impeachable; and that an impeachment lies for an abuse of the power entrusted to an officer, and done in his official capacity, and punishable by this tribunal [the Senate], and an indictment lies for something not done in his official capacity, and to be tried in a court of ordinary jurisdiction."

But we have a legislative declaration upon this subject, which ought to have controlling weight with this body. The Legislature of this State has expressed its opinion that nothing short of a con-

viction of an officer, of an infamous crime by a court of competent jurisdiction, shall be regarded as sufficient cause for removal from office. The Revised Statutes [section 40, page 413, 5th edition,] provides that every office shall become vacant on the happening of certain events enumerated, among which is "his conviction of an infamous crime, or of any offense involving a violation of his oath of office," before the expiration of the term of his office. Section 41 provides that whenever an officer shall be so convicted, the Court before which such conviction shall be had shall immediately give notice thereof to the Governor, stating the cause of such conviction; and the next section makes it the duty of the Governor immediately to give notice of the vacancy created by such conviction to the body or officer in whom the appointment to the office is vested, or whose duty it may be by law to order or give notice of an election to supply the vacancy. The Senate must bear in mind that I am not now discussing an offense involving a violation of his oath of office, for that means official misconduct, which we admit is an impeachable offense, and justifies a removal from office; but I am discussing the question whether the respondent can be impeached or removed from office for the violation of a law in no way relating to his office, or for official misconduct, for several of the charges against the respondent are of this character. The Legislature, in the statute quoted, has declared that a judicial officer convicted by a court of competent jurisdiction of an infamous crime, is unfit to preside in the temples dedicated to justice, and such I may add is the sentiment of mankind. But what is an infamous crime? The statute answers! "Whenever the term 'infamous crime' is used in any statute, it shall be construed as including every offense punishable with death, or by imprisonment in a State Prison, and no other." Conviction signifies the giving judgment against the defendant, and in its more limited sense it means the judgment given against a criminal. The Constitution provides that trial by jury in all cases in which it has heretofore been used shall remain inviolate forever; it further provides that no person shall be held to answer for a capital or otherwise infamous crime unless on presentment or on indictment of the grand jury. The respondent when he accepted office was aware that he could be impeached and removed from office for official misconduct without the intervention of a trial by jury; for official misconduct he knew he could be impeached by an Assembly and convicted by the court for the trial of impeachment, and that he was liable to judgment

of removal from office, or that he could be removed by the Senate upon recommendation of the Governor; he knew in that case he would be deprived of a trial by jury; he waived, as to official misconduct, a trial by jury; he relinquishes that boon when he consents to accept office, and he well knew the tenure by which it is held in this respect. But in no other respect has he waived a trial by jury. When the attempt is made to remove him, not for official misconduct, but because of the commission of crime, infamous crime, he interposes the shield of the Constitution and demands a trial by his peers, according to its provisions and the laws of the land, and the Legislature by its solemn enactments countenances his demands. This proceeding is to remove the incumbent and to create a vacancy in the office of county judge of Oneida county. Will you create a vacancy for any other cause than that declared an adequate one by the Legislature? Will the Senate in the absence of a conviction of the respondent of any offense whatsoever, without an indictment or presentment of any character, resolve itself into a court of original criminal jurisdiction, and contrary to every precedent from time immemorial proceed to try the question of his guilt or innocence of crime, not in any way connected with, or relating to his office? We protest against the exercise on the part of the Senate of such unwarrantable jurisdiction. Its assumption by the Senate would be not only unwarrantable, but would be exercising still greater power than was ever claimed by Parliament—for I think that it will be difficult to establish as one of the prerogatives of Parliament the right to try either peer or commoner without a presentment of the accused charging him with crime. The Senate, I am convinced, will assume that the ordinary criminal tribunals of the State are competent to discharge all the duties imposed upon them; that they will give to the Executive timely notice of the conviction of judges of infamous crimes; and that the Executive will, with becoming haste, take the necessary steps to cause the vacancy to be filled. The accusers of the respondent proceed upon an entirely different theory; they say the Senate has power not only to remove for misconduct in office, but for crime generally; they say not only this, but they also allege that the Senate possesses original criminal jurisdiction—the power to accuse, to hear, to determine, and to convict the respondent of crime. Our accusers by their course, distrust the integrity and intelligence of the prosecuting officers of our criminal courts and of the Executive. They

propose to invest the Senate with power never claimed even by Parliament, and never before dreamed of in this country. We claim that before the respondent could be removed from office, for the commission of crime, not in any way connected with his official duties, he must be duly convicted of an infamous crime by a court of competent jurisdiction, proceeding according to the Constitution and the laws of the land. It is not enough to show here that he is thus guilty, for this tribunal has, as before shown, no power to hear or determine this question. I agree with the sentiments of Mr. Shaw in Prescott's case, where he says:

"I should certainly yield with great reluctance to the position of one of the learned counsel, that the commission of an infamous offense by a judge, as perjury, or forgery for instance, would not render him liable to impeachment. It would certainly be a great defect in the Constitution, if a man could be brought to the bar one day, convicted of an infamous offense, and sent to the pillory, and the next day could assume the robes of office, and sit in judgment and denounce an ignominous punishment upon a fellow criminal not more infamous than himself."

Mr. Shaw is careful to mention as grounds of impeachment the conviction of the judge of an infamous crime. I am willing to go even as far as this: where a judge or other public officer is convicted of an infamous crime by a court of competent jurisdiction, you may impeach the officer and remove him from office, although the crime had no sort of relation to the officer. Conviction of an officer of a misdemeanor will not create a vacancy in office, and of course cannot be the ground of removal or of impeachment, unless it be a misdemeanor in office coming within that portion of the statute, to wit: "or of an offense involving a violation of his oath of office," in which case the office becomes vacant. The Legislature has in view two distinct classes of cases: First, where the offense involves a violation of his oath of office. In that case whatever the grade of the offense, be it high or low, the vacancy occurs. Second, if it does not involve a violation of his oath of office, the crime must be infamous before it can work a forfeiture of office. Upon that point I cite, 1 Greenleaf's Evidence, section 372, as to what constitutes an infamous offense. These provisions of law have existed upon our statute books for many years; they are older than the Constitution itself. A wise Legislature enacted them, and they ha[illegible] undisturbed for a goodly time. They are fit g[illegible] their backs up[illegible]ent

Senate, unless we are prepared to disregard the lessons of the past, and to launch out upon an unknown and undefined jurisdiction, circumscribed only by the fancy or whim of those who, for the time being, are invested with power. I desire also that reference be taken to section 407 of Story's Commentaries on the Constitution. Again, the official act so to be impeachable, must be a willful, intentional and designed violation of law or of official duty. This is the very gist of an impeachable offence. Let us examine the authorities upon the subject briefly. In Merritt's case, Judge Ulshoeffer in determining whether Merritt, who was a special justice in New York to preserve the peace, was guilty of the official misconduct charged, said:

"That John Gourley ought to have been tried for the offense brought against him it is quite clear, but is the conduct of Merritt in discharging him proved to have been willful or corrupt, or designed to prevent the punishment of the offender? My opinion upon this specification is that the discharging of Gourley was illegal and an exercise of mistaken lenity, but that the opinion of Merritt to the contrary, and his discharging the offender, is not, from the evidence before us, to be imputed to bad, willful or corrupt motives. * * * Ministerial or judicial officers would be constantly subject to impeachment if their errors were to be imputed to corrupt motives. But the law is not so unjust as to impute corruption without motive, or misconduct from errors of judgment merely. The charge of misconduct in office is not sustained, because nothing but errors of judgment are proven, and no willful or corrupt motives as to such errors are fairly or properly to be imputed to Mr. Merritt."

Mr. President I must decline to proceed with my argument without a quorum present.

By direction of the President the roll of the Senate was called by the Clerk, and a quorum of members not being present, Mr. Kline moved that the proceeding be adjourned, which was carried.

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ing officers of our c.

ELEVENTH DAY.

ALBANY, *January* 9, 1867.

The Senate met pursuant to adjournment, when Mr. SHAFER resumed his argument, in behalf of the respondent, as follows:

MR. PRESIDENT AND SENATORS: Again we have but a bare quorum of members present, and among that quorum are several members who were not present yesterday. This paucity of attendance is a matter of regret to us, and one which we have had occasion to allude to several times. But, as this is a trial by the Senate, of course, we are compelled to proceed, and, being thus compelled, I do not think it is asking too much to solicit the attention of those present during the brief arguments that will be made by myself and my associate in conclusion of the duties that devolve upon us in this case. Our duties are not only important, but they are momentous. To me, it has been the most important duty of my life, and, at the same time, it has been the most pleasant, because of my conviction of the innocence of the respondent, one of whose counsel I have the honor to be. And, yet, I feel that he is in great peril, because we cannot witness the same faces present on two consecutive days. I feel that, when final judgment shall be passed upon this respondent, it will be passed upon him by those who certainly have not had the opportunity of listening to the testimony of the witnesses, or who have not been present to hear the oral argument. Now, whatever may be the ordinary notions of this proceeding, it is in legal contemplation a trial. The idea that you are not a court of impeachment, and that this is not a trial, but that this is a summary proceeding to remove a man from an office of trust, is one that I believe will be scouted by every Senator about this circle; and, being a trial, it is worthy that attention—that careful and deliberate attention—which is ordinarily bestowed upon cases. If any gentleman will walk across this hall into the chamber of the high court of appeals of this State, he will there see eight judges sitting together and hearing every case presented, whether the amount involved be a hundred or a million dollars. No bare quorum there transacts business, with a portion of that quorum turning their backs upon

counsel, or reading the newspapers during the progress of the argument. I now proceed, Mr. President, to resume my argument at the point which I had reached when the Senate adjourned, yesterday. And, here, let me remark, that, since the adjournment, because of the manifest necessity for terminating this case as early as possible, a division of labor has been arranged by which I shall, to a great extent, forego a discussion of the facts, leaving that branch to my learned associate (Mr. SMITH), who will ably discharge his duty in that regard; and I will endeavor to prove, as I have done to my satisfaction, though many Senators did not hear my argument, that this man cannot be removed, under section 11 of article VI of the Constitution, for any other offences than those for which he could be impeached under section 1 of article VI. I was also endeavoring to prove that he could only be removed for the same causes for which he could be impeached, and then I was endeavoring to ascertain for what cause a public officer could be impeached, and to show that he could only be impeached for willful, designed, or corrupt violation of the Constitution, or some known law of the land, or had been convicted of some infamous crime after trial by a competent court. In pursuing that argument it is necessary to show that his motives were corrupt, and his acts were intentional and designed, and not inadvertent. Upon that point I beg leave to refer the Senate to the case of *Yates vs. Lansing*, in 5 *Johnson's Reports*, page 282, in which Judge Kent, after an elaborate examination of authorities, says, in conclusion:

"Judicial exercise of power is imposed upon the courts. They must dicide and act according to their judgments, and therefore the law will protect them. The chancellor in the case of the plaintiff was bound in duty to imprison and re-imprison him, if he considered his conduct as amounting to a contempt of his court. The obligations of his office left him no volition. He was as much bound to punish a contempt committed in his court as he was bound in any other case to exercise his power. He may possibly have erred in judgment in calling an act a contempt which did not amount to one, and in regarding a discharge as null when it was binding. This court may have erred in the same way; still it was but an error of judgment, for which neither the chancellor nor the judges of this court are or can be responsible in a civil suit. Such responsibility would be an anomaly in jurisprudence. No statute could have intended such atrocious oppression and

injustice. The penalty is given only for the voluntary and willful acts of individuals acting in a private or ministerial capacity. It is a mulct and given by way of punishment. The person who forfeits it must "knowingly contrary to the act" reimprison or cause the parties to be reimprisoned. There must be the scienter or unintentional violation of the statute; and this cause can never be imputed to the judicial proceedings of a court. It would be an impeachable offense which can never be averred or shown but under the process of impeachment."

I also beg leave to refer upon the same point to the case of *Jenkins vs. Waldron*, 11 *Johnson's Reports*, page 119; *Tompkins vs. Sands*, 8 *Wendell Reports*, page 462, and also to the argument of the Hon. Ambrose Spencer, one of the managers in the Peck case, who uses this language:

"A judicial misdemeanor consists, in my opinion, in doing an illegal act under *colore officii* with bad motives, or in doing an act within the competency of the court or judge in some cases, but unwarranted in a particular case from the facts existing in that case from bad motives."

As the last authority I shall cite it upon that proposition, I shall refer to the Mather trial, which was conducted with an ability that has never been surpassed. I beg leave to call the attention of our learned opponents to what one distinguished lawyer in that case said should be proven, before Mr. Mather could be removed. While I do not intend in the least to say that Mr. Mather was guilty of the charges, I will say that he who will take the trouble to look through the record in the Mather case and then look through the record in the case of Judge Smith, will scorn the idea of removing Judge Smith from office, if Mather was acquitted. If the two records could be held in contrast it would be apparent that neither right nor justice would admit of Judge Smith being convicted and removed from office, if John C. Mather was properly acquitted. Bear in mind that the Mather case was a bitter prosecution, not only because of the alleged dishonesty of the accused, but because of the political differences existing between the managers and Mr. Mather He was prosecuted, not only because it was alleged he ought to be for corruption in office, but because he was in political disfavor. I do not say that my client is in political disfavor. I care nothing for his politics. I am presumed to know nothing of the political complexion of this Senate. All I have to do is to deal with this case as I find it. Mr. Hastings, one of the managers in the Mather case, said:

"Thus much, by way of meeting the charges which have been brought against us, in regard to the preliminary proceedings in this case; and now sir, there is another collection of assertions which may as well be met here as any where else. I do not understand that we occupy the ground which has been assigned to us by the junior counsel. I do not understand that any one of the managers—certainly not the board of managers—has taken the ground here that this court is not bound by rules of law."

No ground was taken on that trial that the court was not to be governed by the rules of law, and that they might remove the officer at pleasure. Mr. Hastings continues:

"I did understand that the chairman, in the early part of the proceedings, suggested that with regard to mere questions of practice, questions as to the form in which the proceedings should be conducted, the court was without precedent, and was at liberty, when such questions should come up, to take such a course as sound discretion should dictate. But I did not understand, and I now disclaim in the name of the managers, the proposition that we are to convict the respondent without law or contrary to law."

That was the language of the venerable Orlando Hastings, representing the Assembly in the impeachment of John C. Mather, and he expressed the view held in 1853, from which we have departed, for in 1867 it is alleged that you can remove a county judge, who holds a position quite as dignified as that of Canal Commissioner, from mere caprice and whim. But let me read further:

"I do not understand that any person has taken the ground here that a mere mistake as to a statute is either impeachable or criminal in any degree. I have never heard any such opinion advanced anywhere, but on the contrary, if I did not entirely misunderstand the manager who preceded me, the ground assumed by him was simply that where there was a willful, intentional violation of a statute, either by a total neglect or a positive breach of a duty enjoined, the act was criminal and indictable at common law, and that in such a case the party was acting corruptly within the meaning of that term as used in our legal proceedings. That is the position which that learned manager assumed, and not as has been so often asserted this morning, that a mere violation of a statute through error of judgment, was an impeachable offence. We contend for no such doctrine as that. We ask not the judgment of this court on any such ground. If we do not satisfy them upon the evidence that here has been an intentional violation of law, I have no doubt that every member of the court will vote for an acquittal, as he ought to do in such a case. I am willing to

meet this precisely on the ground where the law meets it. I repeat, in order that I may be perfectly understood, that unless we succeed by the evidence in showing that here was a willful, intentional violation of duty on the part of the respondent, we cannot and we ought not to procure a conviction. And I am not under the slightest apprehension that a single member of the court will be found so far forgetting his duty as to vote against the respondent unless the charge be thus made out.

I am willing to go still further. I am willing to say that we should look charitably at the conduct of the respondent. We should remember that "to err is human." We should remember too, that he had not been in office a great length of time when these transactions occured, and we should be prepared to allow something for his want of experience, in estimating the question whether his acts were really the result of misjudgment, or of that reckless disregard of the public interests which his acts unexplained indicate. Yes, Mr. President, we should judge charitably, and so far as the managers are concerned, as I understand them, they are prepared to say that unless this prosecution can be sustained upon clear and unequivocal evidence, and by that I don't mean uncontradicted evidence, I do not mean evidence which can by possibility be ingeniously explained away, but I mean evidence fairly interpreted by the judgment of honest men,—we are prepared to say that unless this court can come to the conclusion that he is guilty upon evidence like this, he ought to be acquitted. There is a presumption in favor of the innocence of every accused person, which should prevail where the testimony does not produce conviction in the minds of honest, judicious men."

That was said by one who was actuated by the spirit and motives which should actuate every one engaged in a prosecution of this character. I do not say that in the breast of those who have thus far conducted this prosecution, the spirit of malignity and malice in the least prevails. They are not supposed to speak their own sentiments. They are supposed simply to speak the sentiments of those who have retained them. When they tell us, as they do in this printed brief, that Judge Smith was guilty of "gross personal misconduct and immorality, unbecoming the judicial station, such as drunkenness, deceit, and the like," which has been deliberately written, printed and circulated, I am bound to charge upon those who have thus instructed them, malice of the grossest and most fiendish character. But I must proceed. I am admonished by the arrangement of argument, which has been determined upon between me and my associate, that I am trenching upon his grounds. With these rules of law before us, which I have endeavored to lay down, I desire to examine the legal question,

whether, admitting everything they have charged, there is a particle of guilt to be attached to this respondent. Under the 7th rule which you have adopted you provide thus :

"The final judgment of the Senate upon the charges perferred, shall be taken by the President of the Senate, who, upon each one of the charges, as it shall be separately read by the clerk, shall, with its number, propose to each Senator in the order in which his name stands upon the division list, the question, "Senator, how say you, is the first (or second or whatever) item of the charges preferred against the accused, proven?" Each Senator when so questioned, shall rise in his place and answer "proven" or "not proven," and when the division list of the Senate shall have been gone through with upon each charge, the result upon each charge shall be announced, and shall be entered upon the records of the Senate. If a majority shall agree on the finding and proven upon any one or more of the items of said charges, the President shall in the same manner put, and the Senators shall in the same manner answer the further question, "shall George W. Smith be removed from his office of County Judge of Oneida county, for the cause stated in the item (or items) of the charges preferred against him which you have found proven." And the final judgment of the Senate shall be certified to the Governor by the President and Clerk of the Senate."

So that if you find every single allegation in the charges proven, you may yet find that in law he has not been guilty of any offense, and that, therefore, he cannot be removed. Suppose he was charged with shooting at a hawk or a hen, and they should claim that for that he should be removed, and they should adduce proof to show that he had done the act alleged. Your first inquiry would be, is the charge proven, and if you found that it was, then the question would arise for your determination, ought he to be removed? Your answer would be in the negative. Why? Because the act was not a violation of an official duty, nor of any law of the land, nor was it an infamous crime. I am going to examine these charges separately, and show that no single one of them, if proven, is a legal offense, or official misconduct on the part of this respondent. The first charge is, that the respondent, being judge of the county of Oneida, was authorized by law to decide upon the claims of citizens of that county to exemptions from service in the militia of the State, did, in numerous instances, draw up, as attorney or

counsel for the applicants for such exemption, the necessary papers to secure such exemption, and did receive therefor as such attorney, knowing that the several cases so prepared were to come before him for examination or decision thereon, and that afterwards he did pass upon and decide the same in his official capacity. I am going to assume that he did just what is there charged, leaving the facts to be discussed by my associate, and show that he did not violate any law or statute in so doing. By section 299, page 942 of the Laws of 1862, it is provided as follows:

"Any person so drafted may, within five days after receiving notice of the same, present to the county judge of such county his certificate of exemption, or other proof of his non-liability to military duty, which shall be duly verified, and if such county judge shall decide that such person is exempt or not liable, he shall be discharged, and another person shall be drafted in his stead, in accordance with the provisions of this act."

It will be observed that the act contemplates that parties drafted may be actually exempt by reason of being fireman or otherwise, and it also contemplates that there are special causes for exemption which shall be furnished before the county judge. In this case the county judge examined the applicant, and if he found he had sufficient excuse, he reduced his statements to writing, putting them in the form of an affidavit which was filed. But I have no business to refer to that subject. The fact will be commented upon by my associate. But assuming that he drew up those papers, did he violate any law? Now it was provided by section 15, page 466, 3 Revised Statutes, 5th edition, "That no judge or judicial officer shall demand or receive any fees or other compensation for drafting or preparing any papers or other proceedings relating to any matter or thing pending before such judge or officer, or which he has reason to believe will be brought before him for decision." The first charge does not allege, nor does the proof show any violation of the provision of the revised statutes quoted. It is no where alleged that he drafted or prepared papers. The allegation is that he did "draw up," adding "that the several cases so prepared" were to come before him for examination. But nowhere is it alleged, except argumentatively and sup-tially, that he ever prepared a case or prepared a pa of justice, draw up" is not equivalent language to the drafting or pt with the You must either employ the statute language or awful and corguage. Again, they charge that he "did rec miliar to lawyers

For what? Certainly not for anything prohibited by the statute, as I have already shown. They do not charge in the language of the statute, that he received "fees or other compensation" for drafting or preparing papers relative to a matter or thing pending before him as a judge. To bring the respondent within the statute, they must allege first, that he received fees or compensation for; second, drafting or preparing papers; third, in a matter or thing pending before him as judge, or which he had reason to believe would be brought before him for decision; and fourth, in a case where by law fees are not expressly given to such judge. Instead of alleging what is required, they say, first—he received pay for: second, drawing up the necessary papers and for the said cases so prepared; and third, knowing that the cases "were to come before him for examination or decision"—not "pending before him as judge," as required by the statute; and fourth, they failed to allege that for what he did he was not entitled to fees by law. We say that it is well settled, and about which there can be no dispute, that while they are not confined to the same technical accuracy as would be required of a criminal pleader, in framing an indictment against an accused, they must use the language of the statute, or its equivalent, or else a man is called upon to answer or is charged with that which is not in violation of law. You must describe the offence described in the statute; you must state the crime denounced in the statute, employing the language contained in the statute, or its equivalent, or else you will arraign a man for an offence which is no violation of the law. Upon that point I have cited 1 *Chitty Criminal Law*, pages 281 and 282. I say again that they fail in this charge to negative the exception contained in the statute, which prohibits the taking of fees or compensation "except in those cases where fees are expressly given by law to such judge or officer for services performed by him. They have nowhere alleged that justices are not entitled to receive these fees; and it is a well settled rule that where there is an exception to the statute, it must be shown by negative averments that the accused is not within the exception of the statute. On is as point I cite 1 *Chitty's Criminal Law*, pages 284 and 285. ent. This a grand defect in this charge, to which I invite the county of Of my learned friend. I have shown, if I have shown of citizens out before the respondent can be convicted of the first of the State, drges, you must find that he did the acts willfully and g at the time that he had no right to take these

fees, and with the statutes staring him in the face. It will not do to say that because the respondent was a judge he is therefore presumed to know the law, because if that doctrine is to be applied, you will impeach every judge except a judge of the Court of Appeals, because judgment after judgment of every judge upon the bench are overturned by the Court of Appeals. If this judge erred in charging the little sum he did, he erred as other judges have erred. But did he err intentionally, willfully or corruptly. They nowhere allege in these charges that he did these things willfully or corruptly, but they simply say that he did these things. I would like to know if you find that he did these things, unless you find further, that he did them willfully and corruptly, you will pass a sentence of removal upon him. If you hold to such an idea, you will have good grounds for removing a Supreme Court judge from his position, whenever a Court of Appeals should reverse his decision. I aver that there is no allegation in these two charges, that he took fees, and that what he did was done corruptly or willfully; and that being so, if you find him guilty of the charges, he could not be removed; and this consideration is vital to this respondent. If they prove what they allege in their charges, it does not come up to the known and well settled rules of law, and there is no tribunal under heaven which would dare, it seems to me, to evade rules which have been long established. In the case of Prescott, Mr. Webster had taken exception to the third charge and third specification, on the ground that it was not drawn with technical nicety and precision, as was required by the rules of criminal law. After hearing Mr. Hoar, Mr. Blake and Mr. Webster in support of the view presented, Mr. Shaw in reply, said:

"This, surely taken together, does substantially allege that the respondent did, as judge of probate, and under color of his office, unlawfully and corruptly demand and receive of the said Whiting the sum there mentioned. But we contend now as before, that the words 'unlawfully and corruptly' are the very gist of the accusation—the essence of the charge. It is not necessary to set forth in the allegation the evidence by which it is to be supported."

Here was an admission by Mr. Shaw, afterwards chief justice, that the charge would not have been sufficient, except with the allegation that what was done, was done with unlawful and corrupt motives. That is upon the principle, as familiar to lawyers

as is daylight to every one who can see, that where your allegation is found to be true, yet if it does not describe an offense, no judgment can be pronounced. Again, and again, those who are at all familiar with the old practice and with the practice in criminal courts, will find judgments arrested because the counts in the declaration were insufficient, because they were defective, because your indictments were defective, and because the courts have said that the charge did not constitute an offense, and that the verdict does not in any degree or manner enlarge on the indictment or charge. So, we say that if you find him guilty of the allegations contained in the first and second charges, there is no offense for which a removal can be made. I pass over page after page of my brief, and containing much that I desired to say, to the end that I may shorten the duration of this proceeding. The second charge is substantially the same. It alleges that Utley, being the law partner of the respondent, and the respondent being authorized by law to decide upon the claims of the citizens of said county, to exemption from service in the militia of the State, permitted Utley, as the attorney and counsel for the applicants for exemption, to prepare the papers therefor, and to receive pay therefor as such attorney, and the respondent, as the partner of Utley, receiving a share of such fees, knowing that such cases were to come before him for examination and decision, and afterwards passing upon and deciding the same in his official capacity. And here there is no allegation that what was done, was done willfully or corruptly. But let us look at this a moment. The statute provides that no partner of any judge shall practice before him as attorney, solicitor or counsel; first, in any cause or proceeding whatever; second, that he shall not be employed in any suit or proceeding which shall originate before such judge; third, that no judge shall act as attorney, &c., in any suit or proceeding which shall have been before him in his official character. With the third subdivision we have nothing to do, as there is no pretence that the respondent ever acted as counsel in any suit or proceeding before him in his official capacity. It is nowhere hinted in the second charge, that Utley practiced before him as attorney, in any cause or proceeding, as defined in the subdivision. It is nowhere alleged that Utley was employed in any suit or proceeding which originated before him. The charge is not that Utley practiced before this respondent, not that he was ever employed in a suit or proceeding before him, but that Utley prepared papers prelimi-

nary to a proceeding which he knew might originate before him. He prepared papers which afterwards were presented to and passed upon by the judge. Nothing in the shape of a proceeding is pending before him, until the applicant or his counsel applies to the judge for exemption, and this is nowhere alleged. The rule contended for on the other side would prevent the partner of a judge from drawing a deed, and the judge taking the acknowledgement. As before shown, when discussing the first charge, no offense is stated in the second charge, nor is it alleged that the acts or conduct of the judge were willful and corrupt. Whatever was received from Utley from this source was innocently and inadvertently received. Strange, indeed, that the judge, if corrupt, should in six long years have departed from the line of official purity in these instances only! And how lucrative the business must have been! The third charge alleges that the respondent, with a view to his own personal advantage and gain, procure the appointment of certain gentlemen as commissioners of excise, and afterwards, with the same intent, procure from the commissioners so appointed, his appointment in writing, as the prosecuting attorney of the Board of Commissioners, the same being a valuable office and appointment. No offense is stated in this charge, it is not alleged that he appointed, but that he procured the appointment, &c., leaving the inference that he prevailed upon his associates, the justices of the sessions, to appoint. But is it true that it is an offense to appoint excise commissioners with a view to the personal advantage and gain of the appointing power? Who makes an appointment to office with a view to personal disadvantage? It is not charged here that he expected pecuniary advantage and gain? But suppose he did? His appointees are proper men; no fault has been found with them; and there is no pretence that they have misdemeaned themselves in office. There is no charge that he acted corruptly in making his appointments, as he must have done before he could be impeached, as I have already shown. But the facts are otherwise. The testimony is, that their appointment was without any stipulation or understanding at all. The respondent was in favor of the appointment of Mr. French, but the board declined to appoint him, and tendered the appointment to the respondent, and he accepted it. The charge also alleges that the respondent sold his office and his appointment to Barrows, for the sum of $500. It is true that he sold his right to transact the attorney business of the

board for the sum named, and this he had the right to do. Who doubts the right of an attorney, a physician or a lawyer, to sell the good will of his business? There cannot be a doubt of the right of a lawyer to relinquish to another the business furnished by a certain client, with or without a certain consideration. When the board appointed the respondent they did not create an office; they simply selected an agent to do a particular kind of business. Where is the statute creating such an office as an attorney to the Board of Excise? What is the salary? What are the fees? For what length of time does he hold the appointment, or, as our adversaries call it, his office? I have cited in reference to this point, a case reported in 20 *Johnson*, page 492, where the question was raised, whether an attorney admitted to practice in court thereby became an officer. The court held that while he was an officer of the court, and subject to the control of the court, and might be removed, yet in no other sense was he an officer; that as between him and his client no office was created, that it was a mere retainer. But the prosecution use this language in the brief which they have furnished:

"The third and fourth charges are of using his official position to obtain the office of prosecuting attorney of the Excise Board of Oneida county, and selling the office or appointment for money. Also of offering the place to another upon condition of his entering into partnership and sharing the profits with the judge. This is official misdemeanor."

It will be found, upon the examination of the evidence in reference to that point, together with the allegations, that there is no foundation whatever for the charge; that a simple retainer existed between the county judge and the Excise Board. I may remark that the county judge swears that the same thing existed in Onondaga county, and nobody has pretended to deny it; so that if they had charged he had done these things willfully or corruptly there would have been no foundation for it. Does any body believe that a man does willfully, and corruptly and dishonestly, knowing that he has no right to do, what every county judge in the State does? He believed that he did right to take this retainer because it was essential to support the orphans left by his dead brother. When he surrendered a retainer of $1,500 for $500, was there corruption or dishonesty in his heart, or was it the dictate of a nobler instinct to secure means that he might better be able to provide for fatherless children? They have

scanned his life for years and years and all they can find which can be tortured into evidence of corruption, is the taking reluctantly of $500, for a retainer that was worth $1,500, and the retainer itself he had not taken until a year after it had been offered to him. But assuming that this was an office and that he sold it to Barrows, what offence was he guilty of? Section 137, page 977, 3 Revised Statutes, 5 ed., provides that "every person holding or exercising any office under the laws or Constitution of this State, who shall, for any reward or gratuity, paid or agreed to be paid, grant to another the right or authority to discharge any of the duties of said office, shall, upon conviction, be deemed guilty of a misdemeanor, and in addition to other punishments herein prescribed, shall forfeit his office and be forever disabled from holding such office." What law provides for the office of attorney to the Board of Excise? None that I am aware of. But suppose I am wrong in all this and that the respondent sold a public office when he gave up this appointment in writing? Admitting all that; when he is convicted he shall be deemed guilty of a misdemeanor and shall forfeit his office of attorney to the Board of Excise and be forever disabled of holding the office of attorney to the board. Now, it seems to me that if I have shown anything, it is that the respondent cannot be removed from his office unless he has been convicted of some infamous crime by a court of competent jurisdiction, so far as this charge is concerned. If this appointment was an office, he has, at the most, been guilty of a misdemeanor. And, though I scout the idea that it is an office, I will assume, as worst aspect of the case, that it is an office. I endeavored to show yesterday that the framers of the Constitution intended that a public officer should not be removed from office for anything not done in his office unless convicted by a court of competent jurisdiction. When a man accepts a public office he agrees to submit himself to the process of impeachment and removal; but he stands, like every other citizen, so far as every other act of his life is concerned. His official acts belong to the people. If he, in the discharge of the duties of his office, disgraces or renders himself unfit to hold his position, his office must be surrendered to the process of impeachment or removal. But if he violates any law of the land he is entitled to be tried by a jury of his peers, because it is not intended that a court of impeachment or the Senate of this State shall try questions which should be disposed of in the criminal

courts. I pass to the next charge which is like the third, except that it alleges that the respondent, just prior to his appointment, proposed to one James G. French to go into partnership with him in his attorney business for the Board of Excise, and the respondent to have two-thirds of his emoluments or profits, and that French declined the proposition. What possible misconduct, official or otherwise, is contained in this charge, we cannot comprehend nor imagine. Is it illegal for a county judge to practice law? If not, cannot he with impunity accept a retainer? and if he can, what sin or harm can there be in the respondent proposing a copartnership in reference to the business he was to transact for a board which has the right to employ him? Whose business is it that he proposed to take two-thirds of the profits or emoluments, he proposing to do the principal share of the business?

Another branch of the charge is, that after he received the appointment, he made substantially the same proposition to Barrows that he made to French. I will not stop to discuss these ridiculous, nonsensical charges.

The fifth charge is the one that was enlarged upon by the junior counsel in his opening, and has been somewhat dwelt upon by the senior counsel for the prosecution. It states that Utley was the law partner of the respondent; that on the 5th of January, 1865, one Charles E. Norton was confined in the county jail of Oneida county charged with larceny, and that the respondent, being a friend of Haddock, was applied to by him to use his influence with Haddock to procure, and did procure from him, a special order that Norton be mustered into the military service of the United States, and that six hundred dollars should be retained by Utley; that upon procuring said order, and upon application of Utley, respondent let him to bail, Utley becoming security, and that Norton entered the service, the bounty being paid to Utley; and that it was agreed that his bail-bond was not to be enforced, and respondent did not file the same nor deliver the same to the district-attorney. The first branch of this charge refers to the respondent using his influence with Haddock to get this special order. What influence did he use? Certainly not his judicial or official influence; and they do not charge that he used an improper or corrupt influence. What possible misconduct, official or personal, was the respondent guilty of in procuring this order? He exercised no improper influence nor was he subjected to any-

The next branch of the charge is, that the respondent let Norton to bail. Does anybody deny that he had jurisdiction over the matter, and a perfect right to let him to bail? It is not alleged; nor is it alleged that it was not a proper case for bail, and it is not shown that any impropriety whatever was committed in bailing Norton. Next they say that the bond in Norton's case was not to be enforced. Suppose it was not. Judge Bacon and the district-attorney had agreed to this, and Judge Smith had nothing to do with it except to assent. He carried out the arrangement which had been agreed upon by those two officials—was the mere ministerial officer to perform that act. No man occupies a higher position in the judiciary than does his Honor Judge Bacon, and he bailed even a murderer and refused to estreat his bond. And you all know why this was. You know the peril that surrounded the government, and it was deemed better everywhere to fill our armies rather than our jails and state prisons, and no sooner was a man charged with crime, so long as he was not convicted, than effort was made to get him to enter the army of the United States. During the war I had the honor to be district-attorney of Albany county, and I can say that almost as soon as a man charged with crime reached the jail he was brought out on a writ of *habeas corpus*, under an implied understanding that if he entered the army he would escape trial. Now what was the truth in reference to this case of Norton? He was in jail, and was willing to enter the army, and would give his bounty money to any person who would bail him out. Utley contemplated a partnership with Macintosh, and subsequently they did enter into partnership. Macintosh applied to the district-attorney and Judge Bacon, and told them the proposition of Norton, and they assented to it. Norton was brought out upon a writ of *habeas corpus* issued by Judge Bacon, but the provost-marshal refused to muster him into the service and he was remanded. Then the order was procured from Haddock by which he was to be mustered in and credited when personally delivered at Elmira. In the absence of Judge Bacon he was brought before Judge Smith, was bailed, and was delivered at Elmira. Utley got his bounty, which he divided with Macintosh, and the government got a soldier. Judge Smith did exactly what the authorities had assented to, and he never received a dollar of the money. Nowhere is it charged that what he did was corruptly or unlawfully done; and I insist that what was done in good

faith, and assented to by all parties, cannot be corrupt or impeachable. And now we come to the sixth charge—a medley—a conglomeration of charges—a charge which is a credit to the ingenuity of its originator, to say nothing more. I do not believe that it originated in the fertile brain of the senior counsel for the prosecution. The credit of it, I am constrained to believe, belongs to the junior; and I shall go through them and show that if you take every one of these charges, the only question is one between Judge Smith and the United States government, with which you cannot interfere. The sixth charge alleges, in substance, that prior to January, 1865, John A. Haddock had been appointed to and held the office of Assitant Provost Marshal General of the Western District of the State of New York, with headquarters at Elmira; that he had been a personal and intimate friend of Judge Smith; that Aaron Richardson, of Albany, was a bounty broker; that John D. Collins was a clerk of Smith, and employed by Richardson, and that, with a view to the personal pecuniary, but corrupt and unlawful gain and advantage of Haddock, Smith and Richardson, and for the purpose of securing peculiar and special facilities and unlawful advantages to Richardson, a corrupt and unlawful arrangement and combination was entered into between them, Haddock acting under the personal and official influence of Smith, by which such peculiar and special and unlawful advantages were secured to said Richardson. The charge then recites Haddock's letters to Colonel Poole, dated January 9, 1865, recommending Collins and allowing him to make out enlistment papers outside of the Provost Marshal's office, and January 10, 1865, permitting recruits to assign their local bounty, not exceeding five-eights thereof. There is no allegation of corruption, or that any injury was done to the service by allowing the recruit to assign five-eighths instead of three-eighths of his bounty; nor is there any allegation that Collins fradulently made out papers. And yet those two orders, and a third one subsequently obtained by telegraph, by which Captain Crandall was authorized to muster men in at Utica for other divisions, were the only three orders which Judge Smith ever got from Haddock, and it is not charged that any corruption ensued. I know that there was an allegation made by the Judge Advocate, on the trial of Haddock, that that section of the State was swindled out of some three hundred thousand dollars; but the facts are sworn to by Capt. Crandall upon information and belief.

They then charge that Richardson went to Elmira and got letters for several provost marshals. Suppose he did. Judge Smith knew nothing of it and had nothing to do with it. Those who heard the discussion on the subject of the letters that were got from Haddock by Richardson to Crandall, and the telegrams which passed between Richardson and Haddock, may make such use of them as they see fit. If Richardson got any letters for purposes of his own, without the knowledge of Judge Smith, it would be barbarous to use them against this respondent; and that remark will apply to any papers got from Haddock by Richardson through Collins. Then they charge that about January 21, 1865, Richardson presented Haddock a valuable horse, cutter and robes, and a few days after with $2,000. Admit it; what did Judge Smith know about that? It is not charged or proven that he was aware of or suspected it; on the contrary they admit that he was ignorant of it until the 3d day of March. Then came those telegrams, and as to them generally, I will say, that in a court of law wherein exceptions could be reviewed, the admission of these telegrams as evidence, without showing that Judge Smith was privy to their being sent, an exception to their admission would be sustained instantly without argument. They charge that on the 24th day of January, Haddock sent to Richardson at Utica, by telegraph, advice as to the quota of the 21st Congressional district, stating the number to be 2,088. Undoubtedly Haddock and Richardson did contrive as between themselves, to commit this fraud, but is there any pretence that Judge Smith knew of it? Then they charge that Haddock gave to Richardson, a letter to Captain Crandall, stating the surplus of the several districts, and recommending Richardson as a man of integrity. What do we care about that? Suppose a member of this Senate was charged with corruption, and proof was lugged in to show that somebody else had been guilty of corruption, what difference would that make to him? Is there any pretence that Judge Smith knew of this, or that he was ever benefited one cent by it? Strange if he has been thus corrupt that they have not discovered something illegal getting into his pocket. They charge that Richardson deposited with Captain Crandall, $20,000 in bonds, for the special purpose named. Does anybody pretend that Judge Smith knew this? Then they charge that on or about the 3d day of March Smith went to Elmira, saw Haddock, and became fully acquainted with all his transactions with Richardson. We admit that to-

true. Then he learned for the first time that Haddock had received this horse and cutter and the $2,000 from Richardson, and when Haddock called upon him for his advice, he advised him to at once inform against Richardson at Washington. From this it is apparent that Haddock had determined to put an end to Richardson's transactions, whatever had been his views before, and he desired to get the papers which were in Richardson's possession. Smith went from Elmira to Rochester on the 4th of March, and found Richardson there, who was disappointed because Haddock had failed to meet him, and complained to Smith that Haddock had not treated him well. Then it was that Smith, seeing an opportunity to get the papers, suggested to Richardson that he might be of service in arranging the difficulty, and he suggested to Richardson that Haddock wanted the letters, &c. On the 6th day of March, Smith is again sent by Richardson to Elmira, on what Smith knew, by reason of the telegram already sent to General Fry, to be a fool's errand. He carried with him the memorandum of orders which Richardson wanted, and which had been prepared by Collins, and these orders of course, Haddock refused to grant. I say "of course." Why? Because he had already branded Richardson as a scoundrel by his telegrams to Washington. Judge Smith then arranged for a meeting between Haddock and Richardson at Rochester, on the 10th of March. All this while, bear in mind, Smith and Haddock were intent, not upon getting better facilities for Richardson, but upon getting the letters, papers, &c., which Richardson had. The meeting at Rochester was had and it was there arranged, that Richardson should send to Haddock $5,000 and the letters, when Haddock would grant the orders contained in the memorandum prepared by Collins. Richardson got the $5,000 in seven-thirty bonds, but failed to get the letters. Smith told Richardson that they were of more importance than the money. But Richardson said that the letters were at Albany, or that Collins had locked them in the safe, and hence Smith failed to get them. Under these circumstances, how did Smith reason when he took the $5,000? The design of himself and Haddock, was to stop Richardson's recruiting at Utica, and at the same time to release Haddock from the clutches of Richardson, by obtaining from him the letters which he might and which he subsequently did use against Haddock. Hence Smith reasoned that if he declined to go to Elmira without the letters and telegrams, to obtain which was his object, his purpose would certainly be foiled; but

if he went without them and failed to obtain the orders, as he knew he would, and should then report to Richardson on his return to Utica, as the reason of the failure that the letters were not forthcoming, he might still be able to obtain them. Thus reasoning he went to Elmira with $5,000 in his pocket, which was never tendered, and then returned to Utica, and gave it back to Richardson. With these facts and dates presented, will anybody say that Smith took the $5,000 to Elmira, with the intent to bribe Haddock? The idea is preposterous. Days before, Haddock by reason of his telegraphing to Washington in reference to Richardson's frauds, had placed himself in a position where he could not have taken a bribe. The chronology of the case forbids such an idea. And whether the act of Judge Smith in taking that $5,000 was criminal, depends upon the intent and motive with which he did it. If he took it with the intent to bribe Haddock, with the intent and expectation of obtaining the orders which Richardson desired, and if he offered it to Haddock with that view, the act was criminal as an act of bribery. But if he took it, not intending to get the orders, knowing that Haddock could not recover it, and for the mere purpose of keeping negotiations to obtain the letters on foot, and did not offer the money to Haddock for any such purpose, or did not offer it at all, and returned it to Richardson, then Judge Smith is no more guilty of bribery or an attempt at bribery than any Senator around this circle. The seventh charge is a plain, specific charge of bribery. Now assume that he did take the $5,000, intending to bribe this man; that he bore it there with that intent. Assume that he did offer it to Haddock, and that he did desire these orders, but could not obtain them, and that he was guilty of bribery or attempting to bribe. Assume that his act was a felony (which they do not contend for,) or a high misdemeanor, as I before remarked, you cannot act upon that in this proceeding until he has been convicted of that offence before a court of competent jurisdiction. The act has no relation to his office. It was not an official act, and for what he did you cannot convict him. That must be left to a jury of his peers. But he swears that he did not bribe, nor attempt to bribe, and nobody says he did. The eighth charge is based upon a portion of the same facts as form the basis of the seventh. It is a charge of suppressing evidence. It is not alleged that what he did was done corruptly. The Revised Statutes (5 edition, vol. 3, page 973, section 12,)

defines what shall be considered a withholding or suppression of evidence; but there is no pretence that this case comes within the definition there laid down. Greenleaf (vol. 1. section 3, and vol. 3, section 34.) also treats of the subject; but I cannot, with all the ingenuity I can bring to bear, discover how the rules laid there can affect this respondent. The ninth charge is that he habitually neglected to discharge the duties of his office. I regard this charge as the most wicked of all the charges to be found in the Senate document, and the counsel follows it by printing in his brief this:

"The ninth charge is founded upon the same proofs, and is a general charge of neglect of official duty, and of being personally engaged in a business disreputable and inconsistent with the fair discharge of his official duties."

Of all the lawyers practicing in Oneida county, there is not one single man to be found to sustain this charge. On the contrary, as will be enlarged upon, evidence has been brought here to show that he has not only been a faithful, but an impartial and able judge. The junior counsel for the prosecution, in his opening, said:

"The evidence which will be offered, in connection with the preceding charges, will go far to sustain all we have here alleged in regard to the neglect of his business and engaging in bounty brokerage on his own account or for others. Take the month of March alone, and we find him leaving home on the second, to go to Elmira on this precise business, to see Haddock for the benefit of Richardson, or McIntosh and another broker. From thence to Rochester with Hoard to see Richardson, with him Saturday the 4th and Sunday the 5th, starting for Elmira again on the 6th, solely on Richardson's business, Richardson furnishing him money to pay expenses, and making arrangements for another meeting. On the 10th he is again in Rochester with Richardson, when the $5,000 arrangement was made. To Canandaigua on the 14th or thereabouts to meet Haddock solely on Richardson's business. Again to Elmira on the 16th to see Richardson with the $5,000 in bonds, and with Collins' memorandum in his pocket. To Canandaigua again on the 24th, to meet Haddock. To Elmira again on the 29th to see Haddock on the same general business. This is the history of one month's operations as we learn it from his own testimony. In addition to this, and from the same source, we find him at Auburn looking through the recruits at Camp Seward, to see if McIntosh's men were all safe. At Elmira to have credits for them allowed, and bonds released. We hear of him at Watertown and elsewhere seeking to make contracts for himself and on his own account, and telegraphing Richardson or Collins to know whether they could fill his orders. We find him

operating for Martin F. Hamilton and Brown outside of his own county. He was negotiating at Utica and elsewhere to put in men for himself and on his own account. So much we learn from his own lips without calling another witness. Upon the trial of Major Haddock in Elmira, in May and July and August, we find him acting as counsel for Major Haddock, and devoting to the trial and its preparation, we venture to say, not less than three or four months' time exclusively. Meantime, for all practical purposes, the county court is closed, and his official duties neglected and abandoned. Whether these numerous and prolonged excursions from the county at any time interfered with the regular term of the court or not, is unimportant. In various cases, by reason of his repeated absences, his powers and duties were substantially abrogated and abandoned, to the manifest inconvenience of suitors and counsel. The complaint was general and well-grounded, not only during the last year, but to a greater or less extent throughout his entire term. No order to show cause, or any order or writ requiring a return to be made to the judge could be asked for with any assurance that it would be available."

This language was elaborately written by the junior counsel, and yet there has not been the slightest attempt by the prosecution to prove the allegation of neglect. What was the animus of the prosecution in thus making an assertion that he had abandoned his office? Nothing more or less than the malice and malignity which has been exhibited by the prosecution throughout the whole of this case.

Senators, my labors in this case are about completed. I have done all in my power in behalf of this respondent, and I believe I have done my duty. I believe him to be innocent of the offenses which are sought to be imputed to him, and not only that, but I believe him to be as pure and as upright as any judge who graces the bench of this State. All concede to him the possession of the highest character as a judge. And though there have been these attempts to impeach his private character, which I believe will recoil upon those who have instigated them, no one has doubted his legal capacity. I will not only say that, but I will say that he is the peer of those who are to pass judgment upon him. I respect this Senate as much as any man in the State; but when its record of this shall be as clear as that of Judge Smith, there will be no imputations heard against it or any other legislative body.

ARGUMENT OF HON. HENRY SMITH, FOR THE RESPONDENT.

Mr. Smith, in behalf of the respondent, addressed the Senate as follows:

Mr. President: Every judicial examination of an issue formed by a charge upon one side and a denial upon another, is a trial; and here, where charges have been preferred against Judge Smith, and he has joined issue by interposing a denial of those charges, an issue is formed which is confided to this Senate to try. His Excellency, the Governor, has thought proper to submit this question entirely to the Senate, not embarrassing or attempting to influence them by any recommendation in reference to the action they should take upon the subject. The Senate, in proceeding to a trial of this sort will, of course, be governed by the same rules as prevail everywhere in reference to a trial of issues. The burthen of proof is upon the party preferring the charge; it is for him to establish the accusation to the conviction of the Senate beyond a reasonable doubt, and this is to be done, not by inference, not by conjecture, not upon suspicion, but upon proof and by testimony adduced before the Senate. Now it has been assigned to me, Mr. President, to refer to the testimony in this case, and argue to this Senate what our views are in reference to the proof presented. I am aware that Senators come here with reluctance to hear this argument. I am aware, from unmistakeable indications, that they are impatient at the procrastination of this case; perhaps they feel, and perhaps with propriety, that the argument is a waste of time, and that nothing that counsel can say would tend to enlighten them or aid them in the discharge of the responsible duties which are before them; and I would freely, sir, yield the time that has been assigned to me, and give over the case to the Senate for their action, if I was not impressed with the conviction that while there is a possibility, that any suggestion that may be made that would tend to throw light upon this case, on the part of the defendant, it is the duty of his counsel to present it. I cannot resist the impression myself, in my own mind of constantly recurring to the importance of the issue here presented, and the important consequences involved to this respondant. When an humble citizen is arraigned before the bar of the court charged with crime, the court listens, the jury attend, the people look on while the rights of the party are being considered and the verdict or judgment is being pronounced in reference to it; and when I

remember that here, before this Senate, stands a man of culture, a man of high social position, a man of high official position, charged with offenses more offensive in the verbal charges that are now made here, than what is put upon paper; when I contemplate the momentous consequence of the decision here to him, I feel, so far as I am concerned, the hope that by possibility I may say something that will tend to throw light upon the case, and I will rely upon the patience of this Senate while I go over the evidence briefly. The defendant here, for the first time in the history of this State, is arraigned under the laws and the Constitution, and placed upon his trial before the Senate—a legislative body. He is here; everything that he has on earth is involved in this case. His reputation, his wife, his children—everything that is dear to him—is involved in this issue to be passed upon by this tribunal; and I trust the feelings of humanity will prompt an examination diligent in every respect, searching to the utmost degree, with the view of ascertaining whether these charges have any foundation in fact or not. I do not believe, Mr. President, that under the Constitution of this State it was ever intended to confide to the Senate to try any man on such charges as these. The simple history, as I gather from those who were in the convention, and from the debates of the convention in making the articles of the Constitution, was not to create two tribunals with concurrent jurisdiction—one the Court of Impeachment, and the other the Senate; but when they had, in their first section, provided for a Court of Impeachment in which officers might be tried for malversation in office, or an offence which would justify their removal, other questions came up; suppose a man becomes insane after he is elected; suppose he loses his hearing or his eye sight, and thus is physically disqualified from performing the functions of his office, he should be removed. This section was framed for the purpose of creating a tribunal by which officers who have became physically disqualified could be removed from office, when the public interest demanded it. But I am not inclined to indulge in any argument upon that question. I am here to discuss before this Senate the question of fact in this case, and while I ask the Senate to consider this man as they would consider others, and to grant to him the charity they would to all men in the business affairs of life, here and there, being guilty of some technical breach of the laws of the land, I claim, and expect to be able to show here by this evidence, in the little time that I shall occupy, that it

is proved there has not been a single willful or intentional violation of law in any respect proved against this respondant. Now, sir, first: It is charged against this defendant that early in the year 1865, when parties were applying for exemption under the statute regulating the organization of the National Guard in this State, he was guilty of a violation of law, or official misconduct, in drawing the papers on which those claims and exemptions were founded, and it is said that in this he has been guilty of such malversation as calls for his removal. First, although the proof shows that these acts were perpetrated, you have the judgment of the public men of the county of Oneida upon that subject, for more than a year after. These transactions on the part of Judge Smith, were in his office, open, public and notorious, and citizens of the county had paid their money for these services, yet more than a year had elapsed, and no man in the county of Oneida had been heard to complain that this man was thereby guilty of official misconduct. What did he do? These people came to him and claimed their exemption. The law required that he should administer an oath to them and hear their statement of facts, to determine whether they were entitled to exemption or not. He did that, he took their oath and heard their statements of fact. Is there any pretence that in any case among all these persons that came, he did injustice to the State by improperly exempting any one? If there were such a case the record would show it. Is there any question but what he acted with fidelity to the trust imposed in him—to pass upon every case that was presented to him properly and correctly? No man has come here to complain of the judicial acts of this respondant in reference to these proceedings. What did he do? Why, he drew up a paper, because he wanted a memorandum; he thought the business interests required that there should be some record for the inspection of the militia officers of the regiment. The law had provided for none, none was required, and yet the judge thought the public good would be promoted by having a written statement of the person who had sworn to the grounds of exemption, that it might be handed over to the officers of the militia—a record which would be a check upon any exemption by corruption or undue favor; and so, in fifteen or twenty instances, he drew up these papers, signed by the parties, and corruptly, as my learned friend upon the other side would have you understand, charged six shillings for them. The Senate

of the State of New York trying a high judicial officer on a charge of having sold his character—sold his place in society—sold his place in the profession—sold the power of his office for seventy-five cents!—in currency, I suppose—not even specie at that. Beset by enemies, would he thus openly subject himself to prosecution had he known this thing was prohibited? My learned friend will argue, perhaps, that this is evidence of corruption. With all the men with whose cases he dealt; with all the hundreds of the drafted militia of Oneida, nobody had complained—no word of complaint had been uttered because the judge had charged seventy-five cents, or eight shillings, or ten shillings to these persons who came and swore to their exemption before him, a memorandum in writing of which he made to hand to the military officers, and which he would, in the common course of business, make after the statement of facts had disclosed the sufficiency of the ground, with the view of enabling those officers to know whom he had exempted, and ascertain whether it was a just exemption or not. Corruption, malversation in office! It was as public, as notorious and as openly done in the county of Oneida as any proceeding that is transacted in the Legislature of the State of New York. Judge Smith swears that if he had been aware that there was a special provision of the statute, such as it turned out that there was, he would not even have done this; if he had known that there was any restraint upon his drawing such papers he would not have even drawn this paper, and the learned counsel yesterday said, in swearing to that he committed perjury! He stands up before this Senate and charges a man with perjury who has lived for 43 years, and during all that time has so demeaned himself that not a man can be found, even among the most virulent of Utica, to speak against his fair fame. For forty-three years he has lived a life so pure and upright that no man can be found to come here and speak against his character. But the counsel, availing himself of his privilege as counsel, stands up here and charges that this is prejury. I only use the word he did, sir; he put it in the offensive form, that it was prejury. And, moreover, he adds to that, the excuse thus sworn to is no defense at all. And, therefore, it is argued here that this man is not only a perjurer, but a fool, because he swears to what he knows to be false to establish a point that does not answer the charge. The counsel argues when he has sworn to it that it does not amount to any answer. I leave this question with the

Senate, if it is possible, if it should become necessary to recur to these questions—and some of you have been county judges—and on making inquiry of those who have held this office, with entire satisfaction to the public, you will find in the experience of every one of them that these restrictive statutes are occasionally violated, of course unintentionally, but, nevertheless, violated. It is said in the second place that Henry T. Utley, the respondent's partner, was permitted to appear before him as counsel for applicants for exemption, and to receive fees for it, in which the respondent participated. It is true, that when these parties were sworn before the judge, and the exemption was adjudicated, Utley, in some instances, fifteen or twenty, drew similar papers to these the judge had drawn, as a convenience to the parties who were applying to the judge for exemption, and for that service received a similar fee to the judge. It is said that Utley practiced before the judge. It is not true. There is no such proof in this case. On the contrary, the proof is directly the other way. Utley in no instance appeared before the judge and argued an exemption as counsel or otherwise. The only evidence upon that subject is the evidence of the judge himself, who swears unqualifiedly, that Mr. Utley in no instance appeared before him as counsel or otherwise, but that passing upon the application, in some cases Utley made the written memorandum such as the judge had made in the others. Now, if there had been anything wrong intended in all this, what would have been the ordinary effect of it. There would have been some special favor to Utley; his cases would have been heard before other cases; exemption would be more readily granted to his clients than others; other counsel would have been prevented from proceeding in the business; it would appear that it was intended as a monopoly. Is there anything of that kind pretended here? It is not charged. It is not proved. But for a mere scrivener's fee, what it would be worth for a lawyer's clerk in his office to write a memorandum, these memorandums were written and the fee was paid. It would be giving an unreasonable amount of attention to these charges; to detain the Senate with any further consideration of them. The third charge is, that the judge had the controlling authority in appointing the Board of Excise Commissioners, and that he procured the appointment of Weaver, Reynolds and Lewis, with a view of procuring his own appointment as attorney, and selling it to Barrows. Now, what are the facts? There are three commis-

sioners of excise. They hold their office for six years. These commissioners of excise are appointed by the Court of Sessions. That court is composed of the county judge and two justices of the peace, that are called session justices. In 1863 Weaver was appointed, next after that, Samuel P. Lewis was appointed, and in January, 1864, Reynolds was appointed. There is no pretence but what these were proper appointments. The respondent was one of the three who made the selections. They call that a controlling voice. There is no pretence but what it was properly exercised. You have seen before you, or some of you have seen before you these commissioners of excise—they have been here and given their testimony. You saw what kind of appearing men they were—you could judge whether the selection had been fairly or properly made or not. I do not think any one would do them the injustice to say they were not fair or proper men, eminently qualified to fill that office. Early in 1865—that was the year after Weaver had been appointed, and in the spring after the appointment of Reynolds, it appears that the Hon. Roscoe Conkling, of the House of Representatives, and the Hon. Ward Hunt, of the Court of Appeals, and Mr. Charles Hopkins, late postmaster of Utica, and Judge Smith, all combined, did apply, and with their whole influence combined, could not influence the appointment of the attorney of that Board of Excise—the whole of them, the congressman, the judge of the Court of Appeals, the county judge and and the postmaster together. The respondent went to the court house, as the evidence shows, and endeavored to persuade this Board of Excise to appoint a man by the name of French, attorney, and they would not do it, and yet we are told that this man procured the appointment of these commissioners with the view of controlling their action and inducing his own appointment as attorney. The whole of them combined could not influence the commissioners. What was the judge told there? He was told by two of the commissioners with whom he had a conversation in the hall, and it is sworn to by Weaver, that they could not and would not appoint French; that if he wanted the appointment himself it would be a different thing. This, you will bear in mind, was in the spring of 1864, when they could not procure this appointment, when they could not control the appointment, that it was tendered to him in this manner. Were these men, then, under his control? They were not under his control, but they tendered him the appointment practically; they told him if he

wanted the appointment it would be a different thing, and still these gentlemen charge that he selected these commissioners for the purpose of controlling the appointment. They prove themselves, that for more than a year before he took the appointment, it was tendered to him by this very board. Corruptly conniving at the violation of law for three or four years, he had deliberately, feloniously, wickedly and maliciously been engaged in laying a scheme to control the attorneyship of this Board of Excise as they would have you believe. Why, for a year it was offered to him and he would not take it! But here was a county judge, of a county with over one hundred thousand inhabitants, that paid to him as their county judge a salary of $1,500. When the war came on, and high prices came, this man with his wife and family found he could not subsist on the compensation that was given to him for services as judge of that county.—Please remember, that a year before, that the spring before, this suggestion had been made to him, and on being prompted to renewed effort to increase his income by means of the increase of his domestic expenses, occasioned by the death of a brother, who had left a family a charge upon his kindness and affection, he went to one of these commissioners who signed his appointment, then he went to Weaver, who hesitated about it, and said he would rather see Barrows first; afterwards, on the same day, he signed the appointment of Judge Smith; it was then enclosed in a letter to Reynolds, and Reynolds signed the appointment, and sent it back—Reynolds swore before you he did not know who was appointed, and he testified he did not know who Smith was. I believe it is a recognized fact that there are several gentlemen by the name of Smith in this country. So he did not know him to be that Smith who was Judge of Oneida county that he was appointing. He took it for granted that the two elder members of the board had made a proper selection. Well, it is said this man had procured the appointment of Reynolds so as to secure his own appointment as attorney, and yet Reynolds did not even know he had appointed him. So much for the influence over Reynolds in the matter of this appointment. A charge under circumstances like this of dishonesty, I can say right here, shows that this whole proceeding is prompted by malice and vindictiveness, and pretty soon in the history of this case I will be able to develop who the authors are of this scheme that would crush this man, not because he had been guilty of any irregu-

larities as county judge, but because he dared to be a man, and stand up to assert his political rights like a man. Crush him because there were some partisans in the county of Oneida, to whose dictation he was not willing to yield that obedience that high gentleman of high position thought proper. Was there anything wrong about that? Is there any law against his acting as an attorney? They said that cases might come before him as county judge in which he had been attorney. There is no law against that. A county judge may practice in justices' courts as much as he pleases. There is no limitation, and every case he tries there may be appealed to the County Court. The Legislature have imposed no limitation. They would not for what was allowed as compensation restrain them in the practice of their profession, and so they provided that in those cases where the county judge was counsel, and they afterwards came into his court, he should make a certificate of the fact, then a judge of the Supreme Court should hear those cases in his stead. He could practice his profession, except in his own court, without any restraint, thus giving him the income his business would yield, and only imposing as a change in the ordinary course of proceeding that a certificate be made by him to carry the hearing of such a case before a judge of the Supreme Court instead of before the county judge. It did not increase the expenses of the litigant; the costs were no more; the trouble was no more; the delay was no greater, and it left the county judge a chance to do something else towards making a livelihood than the salary of his office. Then there was nothing irregular in procuring his appointment. It was made freely. It was made voluntarily. The commissioners say it was made without any condition, without any solicitation, and they swear more than that, that their own appointments were all made without any reference to the attorneyship. Now, when Barrows came to see he was superseded by Judge Smith, he did not question the legality or regularity of this proceeding on the part of this man. But Barrows was in straightened circumstances in some respects, having made the purchase of a house, and he desired more money than his business yielded him, and he asked that this appointment might be restored to him for a couple of years. The language of the testimony is, "that if I could have the office for two years more I could get in shape." He goes to Judge Smith and what was the position he occupied. On the one side was his own little brood, and beyond that the children of his brother, and

his duties to them were pressing upon him, demanding every mill he could earn. On the other side, was Barrows urging that if he could have this appointment for two years longer, that he might "get in shape." Here was a large business, and these were the considerations presented; he said to Barrows, "I am retained by these men, I am their attorney, I have a right to do this business, but for $500 I will give up the business to you," and this is what the learned counsel says, is buying an office. Buying an office! An attorney consents to give up the business of one of his clients to another attorney, and it disqualifies him from holding any office, because it is corrupt and dishonest, against the public policy, and the Senate should remove a man that listens to an appeal of his neighbor, a brother lawyer who is in distress and gives him business, that he might otherwise have. I have no doubt my learned friend has done this thousands of times up there in Onondaga, where clients gather around him thicker than bees around a beehive, for he has a surplus of business, and who has ever thought it was wrong of him if he could give that business to other lawyers. Was it selling an office? He did not take the money, because he has money enough without. Was he parting with an office when he was handing over these clients to another lawyer? Is it charged in this case because my client having business and needing the income of it, surrendering that business worth $3,000, that he should have one third of what it would be for a year, and which he could legally hold. In all this was there anything that was conducted in a manner to indicate anything criminal? Was there anything covert? Was there anything concealed? Was there anything private about this? Why, on the taking of the testimony here, the counsel enquired in reference to the manner in which the money was paid, and seemed to think it very important to prove that Weaver was called to be present when Mr. Barrows paid to Judge Smith $500. The testimony shows the meeting was casual. The memory of both of the witnesses speaking on this point seems to be indefinite. I am enabled to say that the transaction was legal. It is entirely legal, and it has been held to be legal. It has been in litigation over and over again in this State, and has been held to be a legal and binding contract, where a man sells out his profession in that way for a price agreed upon; it matters not whether Weaver was present or not. I repeat that, in this State, gentlemen in the professions have sold out their clients and patients to successors for a certain price, and agreed not to practice within a given

territory. Those contracts have been held to be legal and binding, and not against public policy, as is claimed in the case. In the fourth place, they say Judge Smith proposed a partnership with James G. French, and negotiated with William B. Taylor with a view of doing this same kind of business. What if he did? If he had a right to do the business, as it has been shown, he had a right to have a partner, French or anybody else, in transacting this business, and to give them, if he thought proper, as he did to give to Barrows, a participation in the profits. In the fifth place, they say that he improperly let Charles E. Norton to bail, on application of his partner Utley. Now, what are the circumstances that surround that case? Norton was in jail charged with the crime of larceny, in stealing some jewelry from his room-mate; he had not yet been indicted. He had made known to some gentlemen of the profession that he desired to be bailed out and enlist in the army, and this desire that he had expressed to some member of the profession who is not named, who communicated it to Utley. Mr. Utley interested himself, as others did there and everywhere, in securing volunteers, if they could, for the army. Mr. Utley understood the circumstances that surrounded this class of cases. He knew that Judge Bacon, an eminent, high-toned man, and an honorable judge of the supreme court of this State, had at Utica bailed a man by the name of William Boyd, to enable him to go into the army when there were six indictments pending against him for passing counterfeit money. He knew that Judge Bacon had let to bail and to enter into the army a man by the name of Thomas Kehoe, and that he was under indictment for murder in the first degree. He knew that other persons, to the number of fifteen or twenty, had been properly bailed by this judge. I do not deny that he went to that judge and asked him whether he would have this man brought before him and let to bail. Nobody has complained of Judge Bacon. Nobody questions but what he acted properly in those matters, but oh, with what a feeling of holy horror these gentlemen raise their hands, and with what perfect consternation it strikes them when they hear that Judge Smith had the temerity to grant a writ of habeas corpus, and bring, for this purpose, a man before him indicted for larceny! But this indictment for passing counterfeit money, and this indictment for murder,—these things, by Judge Bacon, are not to be considered at all. I will show you by and by, Senators, if you think worth while to listen, how these gentlemen who founded this scheme, who got up this

prosecution, succeeded in another court in suppressing this evidence, concealing names and preventing these facts from coming to the consideration of that court who condemned Haddock. Judge Bacon said he would bail this man, and he gave the order to the jailer, and the man was brought before him to be let to bail; when they got there, there was this difficulty: there was no money. There was a regulation that a certain amount of hand money should be retained as a guarantee that the recruit should be delivered at the rendezvous at Elmira. There was no money to pay the local bounty. This man could not be mustered, because they could not comply with that regulation. Then Utley wrote a letter to Haddock asking for a modification of that order, not a modification in favor of the broker, not to pay money into the hands of the bounty broker, but a modification by which, without money, a man could be secured to the service of the United States, and when he had written that letter, he asked Judge Smith, who was an acquaintance of Haddock's, to recommend him, Utley, as he was a stranger, and Judge Smith did so, and an order came back. Norton, in the meantime, had been remanded to jail. An order came, and by some mistake, not in form such as to answer the purpose, and then Judge Smith wrote a letter, which I shall take time to read, with your permission, as it is short, upon the subject, directed to Haddock. I ask the Senators to remember that this is a private communication, sent under seal, before any attention was called to this matter. It went from one personal friend to another personal friend—he would write freely to him, if there was anything wicked intended—there was no occasion for restraint when one friend was writing to another, as they say, corruptly, wickedly and maliciously, with the intent to destroy the peace and harmony of Oneida county; see what he wrote:

"UTICA, *December* 30, 1864.

"My Dear HADDOCK: Allow me a word further in explanation of the matter of the enlistment of Charles E. Norton, which perhaps has been miscarried. Norton proposes, in consideration that Utley bails him out, and in consideration of his other services, to volunteer, and to give Utley such bounty as may be obtained hereafter from the county on account of his enlistment—as between the volunteer and the Government. The case is as if he enlisted without local bounty—he having, of course, all the United States bounties given in such cases.

"The proposition in your letter, as to sending the money to Elmira, to be held by you, would be entirely satisfactory if the

money could be obtained, but the county has not as yet made any provisions for raising the money, &c. No bonds will be issued for some ten days; of course Utley cannot raise the money and advance it on the contingency of the recruit's action at Elmira, when he might finally interpose difficulty.

"I do not see why the man can not be mustered in. The Government is to lose nothing, even if the recruit should desert, and Utley will see to it personally, that Norton is delivered at Elmira, and no credit would be given the county until he is delivered.

"The whole arrangement is at the express desire of Norton, who fully understands his rights. What is desired, is simply directions to muster him into the service and forward him to Elmira, and if he does not report there all right, the whole thing goes for nothing. As ever, faithfully yours,

"GEO. W. SMITH."

Now, what was the order:

"Col. Poole will muster the man on showing him this note, but if the man deserts before reaching here, the credit will not be allowed.

"Your letter fully explains the case. To my utter surprise, but doubtless to your gratification, I am ordered to levy only 275 men on the 21st District; a large number, if not all of your Oneida enlistments must have been for three years. Tell Col. Mc. of this.

"In haste, your friend,

"JNO. A. HADDOCK,
"*Major*, &c., &c., &c."

Now that is the order written to Col. Poole, on the back of Judge Smith's letter, and all that Judge Smith asked was that the payment of the local bounty should be suspended. That money was to be held as security, only that men should be delivered at Elmira, and it was here proposed that the government should pay nothing if the man was not delivered there, and that there was to be no credit. My learned friend will find trouble, I think, out of this evidence, to discover any indication of any intent on the part of Judge Smith to favor his friend and partner, or any attempt to prejudice the government. What next was done when these letters and orders were received. It was found that Judge Bacon was out of town, he was away from home, so the sheriff instead of taking Norton to Judge Bacon's office, took him to the office of Judge Smith, where the bond was signed, and from which office the prisoner was transferred to the mustering officer, where he underwent a surgical examination, and was mustered into the service. It was after that you will remember, that the order was made by Judge Smith. He had been mustered in the service, and

the sheriff, finding that he had no order on his file for bringing him before Judge Smith, the order being to take him before Judge Bacon, he went back to Judge Smith, and the Judge wrote an order that he might put on the file, so that it might be in harmony with the form of recognizance, showing his authority to take him before the officer to bail him. All Judge Smith had to do with him was taking the acknowledgment of this bond, everything else having been decided on before. They say there must have been something wrong about this, because he did not return the bond as the statute requires, to the county clerk's office. I suppose that is a mere matter of convenience. I can speak of the practice of judges in this county, and I think it is uniform. I do not believe in this State there is one of them, that conforms to the statute requiring them to be sent to the county clerk's office, the practice being when they are returned at all, to return them to the district attorney who has charge of them. It was shown by Mr. Jenkins, that in the county of Oneida it was the practice of the Judge to keep these bonds, and when the district-attorney wanted them he would call upon him, if it became necessary to sue. This bond never had been sued, because the court there had refused to estreat the bonds of these men. This bond was in the judge's hands, the same as any other bond, always ready to be delivered. It was not called for by Mr. Jenkins, because the man never was indicted and there was no occasion for proceeding upon the bond; and I should have said that when this order was made by Judge Bacon originally, it was with the express consent of the district-attorney and of the complainant who had lost the property. More than this, sir, Utley, after this man had volunteered and was mustered in, at his own expense, paid over $50 to employ a proper guard who were going with other men, and saw to it himself, at his own expense, that this man was delivered at Elmira, mustered into the service and marched off to the war, where, for ought we know, he did his duty valiantly and faithfully. But it is said that Utley was then the judge's partner, and this man Utley was practising before his partner as attorney and counsellor. I do not think that is so. If so, it is a new department of the law practice. It may be a part of the practice of the law of Utica, but I believe becoming bail is not generally regarded as a part of professional business, and the only practice Utley did before Judge Smith was signing the bond which relieved this man from custody. It is said it was with a view of getting unusual influence that Utley might

have as a partner. Why, all the evidence shows, first, what Utley swears, that this was not a professional act; it was not within the line of partnership business; Judge Smith had no interest in the business, never received a cent of the proceeds of it, never spoke of it, or alluded to the subject of fees for enlisting this man. This was months before the discovery was made, that they had been having in office as county judge for several years a corrupt man such as demanded a trial before this Senate for his removal. He never had a cent of it, never claimed a cent of it, and never spoke of it to Utley in the world. It was a matter not in connection with their business in any way whatever. It is suggested that a partnership was about being formed between Utley and McIntosh, and it went into the new firm, and was divided between them. I have not deemed it worth while to go into the details further. It was divided with McIntosh, a partner, who had been negotiating in the case before the partnership had commenced. If this Senate are prepared to condemn this man, because he did in this slight way what Judge Bacon had done with the approval of the public, more than twenty times, let the responsibility be upon them. Now, they say, on January 9th, 1865, the judge had improper relations with Mr. Haddock, and a bounty broker by the name of Aaron Richardson, and they have proved whatever there was in connection with that charge and the seventh and eighth charges, by adducing the deposition of Judge Smith taken before the court martial held at Elmira, when Mr. Haddock was upon his trial, and which resulted in his removal. The testimony then, on their part, is the testimony of Judge Smith, given on that trial, and I want to look at that testimony. I do not propose to refer to it in detail, but I want to bring the attention of Senators to the circumstances under which that testimony was got out, the circumstances under which that charge was made, the general characteristics of that trial, and the parties who were concerned in bringing Haddock to trial and disgrace, and I will allude to this before I will refer to the testimony, and then we will see it in connection. What was the first proceeding on that trial? The arrest of Aaron Richardson, the man that the counsel justly characterizes as a notorious and infamous bounty broker. He was arrested, and for improper acts attributed to him, of which they say Richardson was guilty. When Richardson was arrested, he goes to Mr. Roscoe Conkling, and retains him as counsel, as the testimony shows, for the purpose of protecting him, from

accusation I suppose. Not long after Richardson was thus arrested, charges were preferred, emanating from the department of which Mr. Dana was at the head, against Haddock, not Richardson. Not Richardson, the man who was the founder of all this infamy, the man who started it, and the man who made the money, as is confessed on both sides. Haddock is charged, and the counsel of Richardson is made the special judge advocate, to prosecute him, and that is the history of the beginning of this court martial. The counsel of the infamous and notorious bounty broker is made the judge advocate to try Haddock. Who Judge Smith is, I will presently show, whom and what he tried to protect and defend. What became of Richardson? Down in a stately mansion, beside Dr. Campbell's church, in this city, he resides. He was arrested and released. Richardson was never tried; the man who was the author of all this trouble, never has even been put upon trial, while Haddock has been disgraced by a trial and conviction. Now, it is sought by this trial, to crush into the dust this man who dared raise his voice in the defense of an erring friend. When Haddock was disposed of—when he was disgraced—a petition is sent down from Utica and the Governor is solicited to bring charges before the Senate against Judge Smith, growing out of this transaction, and my learned friend is brought to the aid of the forces from Utica—two of them in all—and the champions of Onondaga and Utica combined present these charges in reference to these iniquities with Haddock. There is another thing connected with the court martial, which will naturally flow from what I said. If I had the time I would call your attention to it in the testimony. During the whole proceedings before that court martial, the special judge advocate acting I infer under the special directions of the Assistant Secretary of War, it appears, took especial pains, at every point during that trial, to object to, and induce the court to reject any attempt on the part of this man to explain. The counsel, from his points, by and by, will talk about the inconsistency of the testimony of Judge Smith. He will talk about the unreasonable statements of Judge Smith. I ask the Senators here to review the testimony of Judge Smith and look into the proceedings of that court martial and they will see that the court was cleared repeatedly, as this court has been, and the result of those secret deliberations when announced was that explanations should not be given, because they were immaterial to Haddock. That court went further.

It would surprise a man, unless he was only used to read proceedings of a military tribunal, to find the special Judge Advocate objecting to a witness mentioning any names, and when they talked about bailing Norton he objected to any names being used, and the court sustained the objection. They would not allow names to be mentioned. Utica was not to be implicated in this matter. Haddock was the man whose neck was to be placed upon the block. The blood was to flow from that source, and these others were to be treated as sacred. Names could not go into the record. It would not have hurt Judge Bacon at all. The learned and distinguished gentleman who prosecuted with so much zeal and ability the trial of this court martial, did more than was necessary in attempting to protect Judge Bacon.. His name rested on too firm a basis; his integrity is too well known, and the correctness of his judicial action is too familiar to the people of this State to require that his name should be suppressed from the record to save him from any danger or harm. I mean to bring my argument to a close. I know I am wearisome. I know this is a wearisome case, and I feel that in this proceeding there has been, if there ever was anywhere, an unblushing, shameless and disgraceful attempt to ride down and crush an innocent man. It is carrying out a part of the scheme conceived by Aaron Richardson. He is the prosecutor. Aaron Richardson, the bounty broker, as they say—the swindler and villain, as they charge, is to-day the prosecutor, carrying on this proceeding through the aid of counsel, and urging the conviction of this man. When he was arrested he was released and his evidence used by his counsel, and this is but a continuation of the scheme brought about by this vagabond and villain, as they say he is, and in which I concur. Now let us see what actuated Judge Smith. Let us see what is the first thing between Richardson and this man. I ask you to look at the history of this case, and see if it is not as I say, upon the conceded testimony upon which there is no question. It is as plain and manifest as the shining sun at noon-tide. On the 9th of January, Judge Smith went down to Elmira to see Mr. Haddock. Mr. Haddock was his friend; he was solicited to obtain two orders from him by Richardson. Was there anything improper in obtaining these orders? Haddock made the general order. He was the marshal who made the general order. The whole thing was confided to him, and he had a right to modify that order whenever, and in whatever particular he thought best. The two orders

were obtained. One in reference to filling out blanks in Collins' place instead of at the Marshal's office, and one in reference to the amount of money to be paid over to the recruit. He got those two orders and brought them back; they were temporarily handed to Col. McQuade; they were afterwards returned to Judge Smith. Judge Smith told Haddock that he did not want any order that could not be properly granted. He handed those orders over to McQuade; the contents of them were made known to Richardson; they were not received by Richardson or used by him. The county judge of the county of Oneida loved his country. The county judge respected and admired his friend, who was marshal, and when he went there, urging facilities to increase and replenish the army on the one hand, he was faithful to his friend on the other, not asking for any orders but what could be legally granted. Under that suggestion he had not got the orders that Richardson wanted. This, senators will bear in mind, was on the 9th of January. Now, there is not one word of proof; there is not an intimation; not a suggestion anywhere in this case, that from that time until the 3d of March there was any connection between Smith and Haddock, or Smith and Richardson, upon this subject. Bear in mind, the pretence is that there was a conspiracy; that these men were acting together; that their purpose was to swindle the Government, and yet these conspirators never had a word of conversation, from the first transaction on the 9th of January, until after the 3d of March. Is that the way conspirators act? Then, the period of enlistment was passed—it was pretty well accomplished by the 3d of March. Richardson had not found Judge Smith a useful man for him, and he did not resort to him to obtain any further orders. Perhaps he obtained better facilities elsewhere. It is not material for the purpose of this trial. On the 3d of March, Judge Smith goes down to Elmira on some business for a man by the name of McIntosh. When he got to Elmira, in conversation with his friend Haddock, he found, for the first time that he ever heard of it, that Haddock had received a horse, cutter, robes, and two thousand dollars in money from Richardson, and that he had sent Richardson letters and telegrams in relation to the quota, and the number that would be required—stating the numbers showing the deficiency of the county of Oneida. What did he do? He had not been educated in the school of Goldsmith's Hermit. He did not believe that sentiment of the Hermit, when he said:

"And what is friendship but a name;
A charm that lulls to sleep,
A shade that follows wealth or fame,
And leaves the wretch to weep."

He believed in that friendship of the heart that originated with him and Major Haddock when they were boys, and played together on the school green; that friendship continued between them as they grew up into manhood, and though separated as they advanced in their business career, it remained just as devoted, intense and sincere on his part as ever. He had a man's heart in him, he had a love for his friend, a pure affection for him. What did he find? He found that Richardson the prosecutor here, had got his friend involved in circumstances so that he held control over him. It is not the first case of the kind where even good men have sometimes been complicated in this way, sometimes complicated by wicked women, sometimes by wicked men, but it is nothing new for men, good men, even pious men, sometimes to be surrounded by complications growing on by degrees from one thing to another, until an artful person has so bound them down, that on the one side duty seems to call them away, and they are constrained by the fear of exposure and disgrace at the hands of the persons who have thus, for some evil end, drawn around them the toils that hold them in their meshes, and prevent them from doing their duty. I know that men sit as assumed judges, that men in society go about and talk of their own honesty, and about possessing purity and bringing law breakers to justice, and they may appear terribly in anger, to think that a man has ever done such a thing in the world as to receive money in any matter to influence his action, and there is sometimes a show of affected indignation on the part of some men, lest there might be some question about themselves, in cases wherever another is charged with corruption. They wish to appear so pure that they would rise away above ordinary human virtue, and so they are in favor of crushing a man that is even barely suspected of anything wrong. And my learned friend would argue to you, it was the duty of Judge Smith when he found this state of things to have brought Haddock to justice, and to expose him, that he ought to have been indignant at his friend and turned his back upon him. What did he do? What are you trying to impeach Judge Smith for doing? He said: "My friend, stand firm; I was your friend in boyhood, I am your friend now. Stand firm, you shall be extricated from this. This is the first thing that we will do.

We will telegraph to the War Department; it shall not wait for the mails: it shall not wait a minute, though the mail will go on the fastest train that steam can propel; electricity shall be invoked upon the telegraph wire; we will send to Washington and give the alarm that Aaron Richardson is dealing unfairly with the Government, and he shall be arrested and brought to justice. Senators, listen if you can with patience, while I read this first step of the conspirators, Haddock and Smith, conspiring together to raise money to give and pay bribes, as the first step in the great conspiracy, as is claimed, and with the aid of the telegraph, making the following communication:

"ELMIRA, *March* 4, 1865.

"Brig. Gen. FRY, *Provost Marshal Gen.*, Washington, D. C.:

"I am convinced that an extensive system of fraudulent enlistments is being carried on in the Twenty-first Congressional District. I think an investigation will disclose that the board of enlistment have given facilities for these operations, which have been mostly conducted by one A. Richardson. Certain supervisors are also implicated. I wish Col. Baker to come here, if only for a day. Some arrests should be made immediately. I have proof of a stupendous scheme of bounty jumping, having its centre at Utica.

"JOHN A. HADDOCK,

"*Major*, &c., &c., &c."

The first step in the conspiracy is to give the alarm and ask the authorities to send on detectives and arrest these men that are engaged in this scheme. That is the first step that is taken on the 4th of March, as soon as things come to the knowledge of Judge Smith. There is no pretense in the proof that he did anything in connection with Richardson after the 9th of January. Says Haddock: "Send an officer here; let him come here but for a day till I make the communication as to him what my connection with the matter was." He wanted him sent to Elmira. Now it will require considerable credulity to believe that any man with common sense was concerned in a scheme to obtain orders from Haddock by bribing him with $5,000 in money, to get special facilities for him on the 14th and 16th of March, when on the 4th of March this telegraph had been sent to Washington, and the detectives were hourly expected. I will show that on the 14th of March, two days before this pretended bribe, Richardson was actually in custody under the order of the United States Government.

What else did Judge Smith do? He attempted, it is said, to suppress evidence. He should be removed as county judge,

because he endeavored to suppress evidence! My dear sir, [turning to counsel for prosecution,] you will never be able to hold office, if this be so; we have all done that; we have suppressed evidence. I never supposed it was a crime, and I do not believe it now. What evidence did he try to suppress? He endeavored to suppress the telegrams and letters that Haddock had been inveigled into sending to Richardson. What were his motives? He swears that it was to extricate Haddock so that he could do his duty without any wrongful restraint upon him by Richardson; and second, for the public good. Those were his motives. What did he do? He went to Richardson, to Canandaigua. He was at Utica. He telegraphed from Rome. He had various communications in his possession. He went back to Elmira, on two or three occasions, for the purpose of carrying the news back and fro between these two men, ostensibly for the purpose of getting certain favors for Richardson, but making the *sine qua non* all the while that Richardson should give up these papers. He wanted Richardson to surrender the papers which he held over Haddock to his embarrassment, and which held him under restraint in the discharge of his duties. What then was done? Richardson made a memorandum of the orders he wanted. He paid $5,000 in money, to Judge Smith, which they say was to be used as a bribe, and they say that Smith went down with the money to Elmira to bribe Haddock. He (Judge Smith) told Richardson before he started that he did not think there would be any use in his going, because he thought Haddock would insist upon the papers, and everybody knows that to be true. His endeavor in negotiating with Haddock was to get Richardson to surrender to him those papers that had been made by Haddock. Do you suppose he intended to pay a bribe? Do you suppose, Sir, that twelve days after they had telegraphed to Washington for officers, and two days after Richardson had actually been arrested, when this man was engaged in this correspondence, do you suppose he went down there to pay $5,000 to Haddock and deliver to him this memorandum and obtain all these orders? Suppose, as the counsel said, this telegram was a part of the scheme. Both sides must have known that if Richardson was arrested the whole thing would have been developed. The idea that twelve days after the telegram was sent and two days after Richardson was actually arrested, there should be an attempt on

the part of this man to bribe his friend is perfectly absurd. But my learned associate covered the whole ground when he made the additional suggestion, if there was an intention to bribe, why didn't he bribe? He had the cash; he had the memorandum; why didn't he do it? He had Haddock his friend under his control. He had Richardson under arrest. If he went down to pay $5,000 for these orders, he had the cash, why on earth didn't he do it? Why didn't he bribe? There was the money. There was Haddock. Haddock, it is said, was under his control. There was the conspiracy, the great conspiracy of three months standing, as they say, these men conspiring together, and one of the conspirators there with $5,000 in his pocket intending to bribe, and the other with an empty pocket, wanting, expecting the money, and yet the money was not paid. I shall listen with a great deal of of interest to the counsel on the other side to hear him explain why the bribe was not paid. The money was ready; there was a man to go with the money, and a man to receive the money, and yet it was not done. Moreover the conspirators, Richardson and Judge Smith, carrying on a part of the conspiracy at Utica, and in order to make a sure thing of it, called in a witness to see the $5,000 paid over, to defraud the government and bribe one of its officers! The learned counsel finds another difficulty about this. The county judge was guilty of a great wrong in this matter, because he was false to his client—false to Richardson, who was conspiring against the law! He was the attorney of Richardson, he says, and he was false to him, and therefore he was guilty of a violation of the law, because attorneys are bound to be true to their clients. Was Richardson his client? He had not a word to say or a thing to do with him after the 9th of January. An offer was made to Judge Smith of $500 to be paid to him to procure a certain order which he could procure by writing his name, but he refused to do it. He the attorney for Richardson! Richardson endeavoring to ruin his friend and rob the government. He was trying to disarm Richardson of his power to perpetrate this fraud and bring him to justice. He the attorney for Richardson! No, the mantle has fallen on the learned counsel succeeding the government officers who have been prosecuting in this matter. You must know how the alliance was about the chief engineer—the man who carries the pocket-book on the other side of this case is Aaron Richardson, the notorious and infamous bounty broker, as you call him justly and properly. Pun-

ishing this man because he stood in the way of the carrying on these wrongs and these frauds upon the government? Why what an anomaly, Mr. President. Here you have before you, really as the prosecutor, the chief villain in all this matter, and you have on trial the man who brought the attention of the government to it and effected that man's arrest. He is on trial, Richardson is the accuser. Now, Mr. President, there remains but one charge for me to consider, and that is of a general character. It is charged against this man that he was guilty of an habitual neglect of duty, and did not attend to his office when required. The proof is he has been county judge for seven years; that he served one term and was re-elected by the people of the county of Oneida for a second term, and the testimony shows that during that whole term of seven years he has been away from home but seven times, which is equivalent to once a year. It seems almost incredible that such a charge should be stated. The testimony shows his being away from home seven different occasions, just as many years as he has been county judge. They say he has neglected the duty of his office. They have not proved it. Senators will remember how we urged them to bring in the leader, which is Richardson, and put him on the stand. He is in the city. He is not brought here. There were no witnesses. They relied upon the deposition obtained from Judge Smith on this court martial, where, if you will read the minutes, you will find that when he endeavored to explain his action, he was stopped, and it was ruled out. We have called members of the bar of that county, who have shown that he attended to his business and gave entire satisfaction. We show it by the endorsement he has from the people of that county. I have in my hand here a paper signed by the members of the bar of the county of Oneida, and the certificate of the county clerk of that county, that the signatures are genuine, and that they represent nine tenths of the business of the lawyers in his court in the county of Oneida. It shows the virus of Richardson. It shows that the zeal of counsel on his retainer from Richardson, stimulated by liberal fees that he could pay, and by the bounteous reward the Government is said to have paid him, does not extend to all the members of the bar of the county of Oneida, and here upon this paper, with their own hands, nine-tenths of them say, that this man is a judge, faithful and upright, and has always discharged his duty faithfully, and the great majority signing this paper say that

they believe these charges are prosecuted from animosity and malice. What other charge? One other, sir, and that was not made until the counsel printed his points. The presiding officer will remember the resolution that was made the other day, which he had the kindness to offer, which this Court adopted—that the counsel for the prosecution, in analogy to all the practice heretofore existing, should make the opening argument, and he complied with that resolution by printing a brief, and the Senate afterwards thought proper to rescind the first resolution by accepting that brief as the opening argument, thus compelling us to discuss the case without knowing their views, and the Senate deliberately, by their vote yesterday, deprived respondent of a right that never has been denied to any man in such a court or trial in the history of this country or any other, compelling him to argue his case to the Court in violation of every precedent, thus brought in. And what is the charge? The charge of drunkenness made by the counsel in his brief, not made in the specifications, and what is the proof? It requires there should be a gentleman of high reputation, a man must be of high standing as a gentleman, who escapes criticism when he makes a charge of that kind on paper, knowing there is no proof to sustain it. On paper this man has been charged with drunkenness. The only proof there is in the case is, that while they were in Rochester he drank of ardent spirits, but not so as to affect his mind, his reason or his understanding. This is the only proof in the case, from the beginning to the end anywhere, and here it is charged and copied by the stenographer, to be reported in this trial, to be read by the public now and hereafter. There is no proof here of drunkenness. I say to the counsel now, that I defy him during his argument—I challenge the proof of a word in this case, or out of this case, of this man ever having been drunk. Now, my learned friend, when he undertakes to make charges of that sort, should understand, and I think he does, that desperation of that character betrays the weakness of his case, and shows that with all his accustomed fairness—his acknowledged fairness, that he has imbibed this spirit from bad associations in this case, and has absorbed some of the venom that the real prosecutors have manifested. The charge of drunkenness is spread upon the record, after the testimony is closed, when in the original charges there is not a word of it. Shall the man be convicted because he

drank of liquor? It would hardly do to apply that test to lawyers. There is not many in the profession that could stand it, and I am afraid the learned counsel on the other side would be found wanting with the rest, although I know his general propensity is to strict temperance, but I think there have been occasions when he yielded to temptation, and indulged in moderation, of course, and yet, he charges without proof against this man, what he ought to know is not true, and what he knows never was pretended in the charges preferred. Now, gentlemen, you have before you this judge. Everything on earth to him is involved in this trial. For forty-three years he has lived, and practiced his profession from his admission, and discharged his duties as a citizen and an elector, perhaps having erred in offending some prominent gentleman and politicians in Utica, but as a general thing, discharging well his duties as an elector and citizen. He has discharged his duties as judge for seven years, and nobody but Richardson and his coadjutors have ever been heard to make a charge against him. And he stands here now and asks of you nothing, but that you will judge this case intelligently in the light of this evidence, and that you will treat him as he deserves from the real truth of the case.

I am aware that in the examination of this case there has been considerable embarrassment in getting at a chronological history of the transactions involved. Senators who have examined it must have experienced that. If there is any question arises in reference to any statement I have made from the evidence, may I ask you to refer to this printed volume to verify its correctness. I hold myself responsible to furnish, from this printed volume and from the undisputed testimony, the verification of the accuracy of every assertion I have made in reference to the facts of this case, as proven before the court. There are two points made in the brief of the counsel on the other side, which are not argued to you at all, in reference to the credibility of Judge Smith and his character as a witness. I have stated all I desire to in reference to his character. No one has been called to speak against it. In reference to his credibility I infer that the counsel refers to apparent inconsistencies, or rather to inaccuracies of detail, that have sometimes been fallen into in the ment of the judge, in one place, which he has corrected, and in another. I ask the Senators to read his testimony through, bearing in mind all the exceptions taken by the special Judge Advocate of the United States, excluding his explanations when they were offered upon that trial, and if they will turn to his testimony

upon this trial they will find a succinct, methodical statement of this proceeding, substantially as it has been argued to you on my part of this case. I crave, in the behalf of my client, a deliberate examination upon these questions of fact, and it does seem to me that if I am correct in the inferences that I have drawn, that if the truth is developed by this testimony, it will not become necessary for the Senate to examine the questions of law that have been so elaborately and ably discussed by my distinguished associate, for I think if you will allow anything for the imperfections of human nature, if you will allow anything for the technical deviations from the law that are perpetrated without wrongful intent on the part of men every day in their business; if you make allowance for that true spirit of love and affection that is manifested justly and properly in endeavoring to extricate Haddock from the meshes of this man Richardson, if you will not gratify the caprice and malice and vindictiveness of Richardson, and immolate this defendant without a full conviction that his guilt is proved, we shall be content. I am sure that such an investigation will acquit this defendant and restore him to that place in the society in which he lives that he merits, and restore him to his position with his family and in the social circle, and enable him to resume the discharge of his official duties, and continue them from time to time, from term to term, in the future as in the past, while he shall continue to be the voluntary choice of the electors of the county of Oneida; this would be but a just judgment of this man, learned, educated, qualified, honorable; yes, Sir, honest and worthy, and if it can be, it would be but due from this Senate to rebuke in some way the hostility manifested by the prosecution, conducted with unfairness in its incipiency, urged here, first, upon the evidence produced under the disadvantages I have disclosed, and then by the unfounded statement made by the counsel, charging upon this man what no man who knows him ever suspected him of. Let this man be tried as other men. Give him the fair, deliberate judgment of this enlightened body, and with the conclusion to which you shall arrive, I am sure will come the declaration of his innocence and his restoration to his rights.

On motion of Mr. Gibson, the Senate adjourned.

TWELFTH DAY.

ALBANY, *January* 10, 1867.

The senate met pursuant to adjournment, when MR. SEDGWICK proceeded to argue the case in behalf of the prosecution as follows:

ARGUMENT OF HON. CHARLES B. SEDGWICK, FOR THE PROSECUTION.

MR. PRESIDENT: I congratulate you and the senators who are present, upon the prospect of reaching the end of this case. It has occupied much of the time of the senate, and it is not singular that some impatience at its delay should have been felt. Still, sir, it is an important case. It is the first attempt under the Constitution of 1846, to remove an unfit and unfaithful judicial officer. It is important to him because of the magnitude of the issues involved. It is important to the State because of its possible effect upon the administration of public justice. It is a case which commends itself to the careful examination and consideration of the dignified tribunal before which it is brought. Some question has been made as to the origin of this complaint. I have only to say in respect to that, that the poorest, the lowliest inhabitant of any county in this State, who depends upon the just administration of the laws for the protection of his life, his liberty or his property, has the right to appeal to the Governor of the State under its Constitution against any oppression, against any extortion, against any corruption which he may observe, or thinks he observes in any judicial officer of the State. However humble his condition, if he can satisfy the chief magistrate of the State that he has just cause of complaint, that any judicial officer for any reason is unfit longer to be entrusted with authority, it is proper that such case should be brought before this senate for its consideration, and, therefore, if but a single inhabitant of the county of Oneida felt aggrieved at the judicial conduct of its county judge, he would have the same right to be heard before this tribunal as all the citizens of Oneida county together. The governor has been moved to present this case for the consideration of the

Senate, and I think the honorable counsel upon the other side has deceived no senator, nor has he deceived himself, with the idea that Aaron Richardson or any other bounty broker, or any other rascal that infests the community, (the breath of whose nostrils is in having purchaseable judges upon the bench,) has come here to accuse this respondent. Who are his accusers? I stand here to-day sir, as the representative of hundreds of the responsible inhabitants of Oneida county—a judge of the Court of Appeals, a justice of the Supreme Court, the business men, the farmers, the honest men of the county of Oneida, who by scores and hundreds have come up to the Executive of the State demanding judgment against this judge. I appear here as their representative. I demand, in their name, a fair, a patient and an honest hearing of their complaints. They are actuated by no motives of malice or vindictiveness. They have observed the chief judicial magistrate of their county having his name connected, in the public papers and in all the conversation that pervades that county, with a man, the chief among public plunderers and robbers. They thought that self-respect should have induced him, whatever reason there might have been for the suspicions abroad in that community in respect to his corrupt connection with that individual, they expected, and had a right to expect, that a just and proper sense of self-respect, when these reports were in circulation, calculated to diminish public confidence in its judicial tribunals, that he should have resigned his office; and when he chose to be the counsellor, the friend, the witness of a man who disgraced his station and betrayed his trust, and who stands convicted of an attempt to rob the people of this country, to weaken them, to destroy the existence of the government, may be, that, if he had chosen to adhere to his fortunes, he should have had the manliness to resign his judicial office. And even if he felt that he was innocent, and that Haddock's condemnation by the court martial and the public was wrong, he should hardly have undertaken, with a tarnished reputation and a stained name, to have continued to administer public justice in that county. There was enough of truth in these matters to justify, if not require his resignation. The time has not come when public officers can heap coals of fire in their bosoms and not be burned; the time has not arrived when men can handle pitch and not be defiled. But, sir, he has chosen otherwise. He has chosen to submit himself to the Constitution and the laws of the land. He had a right to hold on to his office, and come here

and vindicate his reputation, and so, sir, under the Constitution, in compliance with its forms, we have come here and present a case, which we believe to be a fair and proper one, for the decision of this tribunal.

THE POWER OF THE SENATE.

The first question that arises, is in respect to the power of the Senate: the right of the Senate to remove a county judge upon the recommendation of the Governor, and the reasons which will justify such a removal. Under the Constitution of 1846, there are two remedies for the people against the abuses of public office. The first, is by impeachment, to which every civil officer in the State is subject. They may be impeached by the terms of the Constitution for mal and corrupt conduct in office, and for high crimes and misdemeanors. For the purposes of impeachment, the Constitution and the laws have provided a court. They have provided for its constitution; who shall be its judges. They have provided for a trial; for its method and forms. They have provided for a judgment and punishment, and how far it may extend; they have provided, that in case of a successful impeachment of a public officer, he may be punished by disfranchisement and incapacity to hold office in the future. The Constitution also provides for the removal of all civil officers in the State in another method. This is not for punishment. It requires no trial. It provides for laws, declaring also, when public offices shall be declared vacant, where no exercise of the power of removal is necessary, and my learned friend, who opened the case upon the other side, has fallen into a grievous error in supposing that the power of removal, and the declaration under the statute of a vacancy in office, was the same thing, and that beyond impeachable offenses, there was no power for removal, except upon conviction of a crime, involving moral turpitude or a felony. The Senate will see, in a moment, the fallacy and difficulty of the gentleman. This argument confines the power of removal to impeachable offenses only, because *no removal* is necessary upon conviction of crime. The office is, by law, declared vacant. The Governor, as the executive, is merely authorized to declare the office vacant without removing. It is just as if a man dies, and no process of removal is required upon conviction of a felony, any more than when the hand of death is laid

upon the incumbent of an office. But as I said, the Constitution has provided for laws regulating the removal of all civil officers in the State. We are not left without protection against imbecility, against vice, against crime in our public officers. So in the first place, the Governor has the power of removal of the State Treasurer, of sheriffs and clerks, of the Register and Clerk of New York, of coroners and district attorneys, of all officers appointed by him for a certain time, or to supply a vacancy, and those he may remove without assigning any cause, in his mere discretion. So the officers of the Sanitary Commission, the Board of Health and the Commissioners of Police, are removable by the Governor. In the next place, there is a provision for removal by the Courts, of counsellors, solicitors and attorneys, justices of peace, judges or justices of inferior courts not on record, and their clerks—these can be removed by the Supreme Court, under the provision of the 17th section, 6th article of the Constitution; and laws have been passed conferring the proper power and setting its limits upon the Supreme Court, for the removal of these officers. Again, the Canal Board and Canal Commissioners may remove the superintendents and collectors of tolls, which last having charge of the public moneys may also be removed, under certain circumstances, by the Comptroller of the State. Again, by the Legislature, judges of the Court of Appeals, justices of the Supreme Court, by concurrent resolution of both Houses of the Legislature—two-thirds of the Assembly and a majority of Senators concurring. Again, the Senate, on the recommendation of the Governor, may remove judges of the County Courts, surrogates, recorders and other judges of inferior courts of record, subject to the provision and limitation of the Constitution. So that besides the power of impeachment, which applies to all civil officers for certain offences, to wit: misconduct in office, high crimes and misdemeanors; the Constitution has provided a method of removing every other civil officer in the State by another and a different method. Now, for what causes may removals be made? That is the important point before the Senate now. In the first place, I contend that in many cases where removal be made on the recommendation of the Governor, no trial or notice to the incumbent is provided for, and no cause whatever need be assigned. There are many cases of that description, and the supreme court of the State, in the case of *The People* v. *Carrique*, 2 *Hill*, 100, have decided that in such case the removal is entirely in the discretion and judgment

of the officer intrusted with the power of removal. So also in some cases, by the bare fact of an appointment of a successor, an implied removal may be made. In the next place, removals may be made for impeachable offenses under this provision of the Constitution, a resort to that method of removal not being required and not being necessary. And the counsel upon the other side who opened the argument upon the law, as I understand his argument, concurs entirely in respect to this — that where you do not desire to carry the accusation to the extent of requiring the punishment of an officer by disfranchisement, these removals may be made for impeachable offenses, and therefore, the power of impeachment under one clause of the Constitution, and the power of removal under the other, are concurrent remedies. I say, in the next place, that the power of removal may be used for any cause which the Governor thinks sufficient to warrant his interference, provided the charges on which he bases it are proved to the satisfaction of the Senate and they concur in the Governor's recommendation. Counsel upon the other side contend that it can only be for corrupt or mal-conduct in office—for some offense belonging to the official station; for some offense constituting official misconduct, or for a felony, after conviction. But in the latter case, as I have observed, no recommendation of the Governor or action of the Senate is necessary. The statutory provision in regard to vacancies in office applies to every officer in the State. His office becomes vacant by death, by removal, by a neglect to, take within the prescribed time of the law, the oath of office, by the conviction of a felony, in any court of competent jurisdiction, and is *ipso facto*, his office is vacant. It is not a removal in any proper sense of the term. Therefore, I say that the construction upon the other side is much too narrow. That the construction which the counsel gives to the power of removal under the 11th section, 6th article, would not allow public officers to be removed for imbecility; for a failure of their faculties; for insanity; for intemperance; for any disqualifications of age or sickness, or for any of the causes which render it necessary for the public benefit, for the protection of the community, that officers who have become incompetent to transact the business of their offices may be removed. And I contend that the whole scope of the Constitution and the laws under it, show that the people of this State did not intend to leave themselves so powerless in the hands of incompetent and imbecile officers, and that beside this

general power of impeachment, where punishment was not required, in the hands of some power in the State, either the Governor, or the two branches of the Legislature, or Supreme Court, or in the hands of the Canal Commissioners or Comptroller, or in some other place they intend to place the power of removing every officer who should prove unfit or incompetent to the discharge of his duties. There is no restriction in the language of this article of the Constitution, to removal for impeachable offenses, nor is there any restriction to removal for offenses not impeachable. They might have confined this inferior power of removal, without punishment, to causes for which officers could not be impeached. But any Senator who will take the time to examine these two provisions of the Constitution, will see that the intention of the people in framing the Constitution, was, in cases where men became unfit to continue in public station, to have some ready and prompt method of removing them from office, without going through the tedious course of a trial by impeachment. And, I say, that among the causes for removal, or causes for offenses not impeachable, are those of imbecility, immorality, drunkenness, and such conduct short of crime, in respect to judicial officers, as brings the administration of justice into contempt. Upon that subject the counsel who opened upon the law argument on the other side referred to Prescott's case in the State of Massachusetts, a case in which the most eminent counsel of the State were employed—a case which received great consideration, and which, as an authority, is safe to be followed, although not binding upon the Senate of this State. By the Constitution of Massachusetts, officers could be removed by impeachment for official misconduct, and for high crimes and misdemeanors. They could also be removed by legislative address, that is, by a concurrent resolution of both branches of the Legislature advising the Executive to remove a public officer. The last provision, as the Senate will observe, standing in the place of a removal by the Senate upon the recommendation of the Governor of this State. Now in Prescott's case much discussion was had as to what were impeachable offenses, and what offenses could be reached by the other method, of legislative address. The counsel read from the argument of Blake upon one side, and Chief Justice SHAW upon the other, both eminent men in their profession. Mr. Blake having been employed during the course of his professional life, I believe, in every impeachable

case that arose in the State of Massachusetts during that period, and commending himself to the consideration of every person who desires to study this subject by the breadth of his views upon the subject of impeachment, the evident study which he had bestowed upon it, and the clearness with which his conclusions were stated. Chief Justice SHAW, upon the other side, was a man of at least equal eminence in his profession, who afterwards attained the highest judicial honors in the State. The counsel did not read what pertained particularly to this case. That is the opinion of these gentlemen upon the causes for which officers could be removed independent of an impeachment, and I shall supply the vacancy by reading what they say upon that subject. Mr. Blake, in arguing, says: "Under the Massachusetts Constitution I assume the following positions:

1. That the senate of Massachusetts, when assembled in the form of a court of impeachment, is to all intents and purposes a court of judication. That it is not to be regarded as a convention in the nature of an inquest of office, sitting to investigate the general character, and manners or morals of the magistrate, and to remove him from office or not, according to its own will and pleasure, or upon any ground of policy or State expediency.

2. That the jurisdiction of this court only extends to the trial and punishment of certain crimes and offences against the known laws of the land.

He argues that the principle has been settled in England, for two hundred years as a part of the law of impeachment, "that it is a process which can only be resorted to for the punishment of some great offence against the known settled law of the land."

That the Constitution of Massachusetts has wisely restrained the trial by impeachment to public officers, and with regard to these, to such offences only, as may have been committed in their offices. And he puts the question, "that if under the Constitution and law of this commonwealth, the proceeding by impeachment be open in every case where some petty delinquency, some trifling aberration from the exact line of official duty whether amounting or not to a crime in the eye of the law, is imputed to the civil magistrate, why it is *that another and not less effectual remedy for the grievance in all such cases, viz: the removal upon address of the two branches of the legislature, has been studiously appointed by our Constitution*, and superadded to this all searching, all pervading power of impeachment."

In respect to offences not amounting to impeachable crimes, he says: "The wisdom and vigilance of our laws, have not failed to provide another not less effectual remedy for all such mischiefs." "It seems to have been in tenderness towards these frailties and infirmities of human nature, to which men in high stations are peculiarly exposed, that the wisdom of our constitution has provided the milder corrective which has been mentioned."

"It is not, indeed, to be denied, that by this process of address, the whole magistracy of the Commonwealth, so far, at least, as regards the mere tenure of their office, has been virtually left to the sovereign will and pleasure of those branches of the government" —— viz: the two houses of the Legislature.

On the other side, Chief Justice SHAW says: "It is true, that by another course of proceeding, warranted by a different provision of the Constitution, any officer may be removed by the Executive, at the will and pleasure of a bare majority of the Legislature; a will which the Executive, in most cases, would have little power and inclination to resist."

In other words, in cases of impeachment there is to be a trial, by a court, governed by the rules of the common law to some extent, and the question, of official misconduct, of guilt or innocence of alleged crime, is to be judicially determined.

Under the other provision for removal merely, the Governor and Senate are to consider and determine questions of fitness or unfitness, of expediency, of moral worth and integrity, and are free to exercise the power of removal granted by the Constitution whenever they think the interest and welfare of the community demand it.

Now this distinction, and the position which I assume, could not possibly have been put in clearer or plainer language. That it is left to the discretion of the removing power, in that case, the two branches of the Legislature, in our State, the Governor and the Senate, to remove, in all cases short of impeachable offenses, whenever they, in their sovereign will and pleasure, thought the remedy ought to be applied. The philosophy of all this is plain. Public officers have no inherent right to administer public affairs. They hold their offices by the tenure of no contract with the people. In a democracy—in a true democracy—the government of all, for the common benefit, by public servants and not by public masters, the people retain the authority to remove unfit and improper servants. They hold their offices by no divine right.

It is not as in a despotism, where officers are made and unmade at the will of a single man. It is not as in an aristocracy, where public officers are set about the throne as its ornament and support, and their tenure of office depends upon the will of the sovereign. But in a true democracy public officers are public servants, and when they fail to discharge the trust reposed in them, every well considered constitution, and every well ordered government, will see to it that there is some power to cut short the tenure of their office. I say that the power of the Governor and the Senate, in a case of this description, is undoubted. I concede it should be exercised with a reasonable judicial discretion. Safeguards should be placed around everybody intrusted with power, in the highest places as well as in the lowest office. Public servants are protected from oppression and injustice in this State. Judicial officers, by the necessity resting upon the Governor, under the Constitution, to assign the causes to the Senate for which he demands their removal. They are to be spread upon the journal of the Senate. The case presented is to be heard. There must be such reasons as will justify the Senate, if they remove the accused, in the impartial judgment of the people and posterity. Because, sir, I have admitted, and I desire it to be impressed upon the attention of the Senate, that if you condemn the accused without adequate cause; if you condemn him from political prejudice; if you condemn him from passion or resentment, the public judgment to which he will appeal, will convict and condemn you. There is no necessity for alarm in respect to the safety and security of the citizen who holds public station. There is a public sense of justice and fair dealing, an intelligent knowledge of the rights of the citizen, and a hatred of persecution and oppression; a firm determination to demand rights and maintain them, which is a perpetual safeguard and defense for every citizen of the State. Neither the Governor or the Senate dare, without abundant reasons to justify them, proceed to the condemnation of a public officer selected by the people. I, therefore, invoke for the accused in this case the protection of the Constitution and the laws. I desire that he shall have all the presumption of innocence, all the presumption of integrity in the discharge of his official duties, which attach to him and to every one until guilt and misconduct is proved. All the defenses, substantial and technical, which he has a right to demand, I ask for him as solemnly as his counsel or he himself could demand them. In a

spirit of justice and fairness, but with the courage and fairness which truth and the public safety requires, I shall proceed to examine the charges against the respondent, and the evidence which has been brought to support them. And if you believe that he is unfit longer to hold judicial office; that he has been guilty of misconduct and extortion; that he is corrupt; that he has violated the plain laws of the State, which he is bound to know and respect, and which it is his duty to observe himself, as well as to enforce obedience upon others; if you believe that he has brought the administration of justice into contempt, and soiled the ermine which he should have kept spotless; if his hands have been open to bribes; if he has endeavored to swerve other public servants from duty, and endangered public liberty, no weak, misguided sympathy should prevent you from letting the axe fall, and justice claim its victim.

THE CHARGES AGAINST THE RESPONDENT.

Before taking up the charges against the respondent, perhaps I shall say one word in respect to certain citizens, which have been made in respect to their sufficiency in form; that they have not come within the rules required by criminal law, relating to indictments. I will content myself on this point, with reading another sentence or two from this case of Prescott: "In regard to the form of articles of impeachment, little aid can be derived from common law precedents. One general rule, however, appears to be well established, which is, that in articles of impeachment, the same strictness of precision is not required as in case of indictments. If this rule is founded in considerations of propriety under the common law of England, its fitness here is still more obvious. There, the object of an impeachment is not merely to animadvert on the official misconduct of the respondent, but it embraces the whole extent of the offense charged, with a view to the whole punishment due to such offense, and the judgment upon it may either be capital or any punishment short of death. It has, therefore, all the object and effect of an indictment. Here, the object is to inquire into and decide upon the official misconduct of the accused, and the only reasonable rule with regard to form, is that the articles shall set forth all those acts which constitute such official misconduct, with sufficient certainty and precision to enable the court and the accused to understand the nature and extent of the offense charged." So, under various precedents which are cited in the

appendix to that case, setting forth the facts of which the accused is charged, in general terms, has been held sufficient to enable the court, even in the trial of an impeachment, to pass upon it.

The accusations in the first and second charges, which are substantially the same thing in respect to the facts, are: First, of extortion. Second, of a violation of a known statute of the State, prohibiting a judge from drafting any papers, to be used in his court, or in any judicial proceeding before him, and for allowing his partner to practice in his court. In respect to the first charge, of extortion, it is a well settled principle of law, that extortion in judicial officers, or in any public officers, is a crime and misdemeanor. It is so at common law, and so by our statute. And, extortion consists in demanding or receiving of any person, any sum that is not due, or before its due, or in excess of what is due. By the statutes, which I need not refer to particularly, because they are familiar, and by the Constitution, judicial officers are prevented from receiving fees, with the single exception, that they may take for some service, such fees as justices of the peace, and commissioners may receive. In other words, when they administer an oath or take an acknowledgment of a deed, they may take twelve and a half cents for one and twenty-five cents for the other, and so in respect to other services of that description. In this case, it is proved, that in many instances, the judge himself received, from persons who came before him claiming exemption under the law of 1862 (by which he is authorized to decide concerning questions of exemption), that in fifteen or twenty such cases, as I think he testified, he took from six shillings to two dollars each, for drawing the papers, and that his partner, in thirty or forty more cases, making some sixty or seventy in all, did the same thing. By the statute he is entitled to demand and receive, in each of these cases, twelve and a half cents for the administration of an oath, and no more, and all that he receives in excess of this is extortion. It is demanding more than is due. It is also, besides being extortion under the common law and under the statute, in express violation of the other statute referred to, which prohibits the drafting of papers to be used in his court or before him in any judicial proceeding by the judge. Now, what is the answer to this? The facts are undisputed. No question is made in respect to them. It is confessed and admitted, upon the testimony of the judge himself, that he has been guilty of taking these sums of money. There are two excuses offered in

his behalf. The one is that he did it in ignorance of the law; that he did not know it was contrary to the statute that he should draft papers to be used before him in legal proceedings which came before him for judgment. The other is, that the cases were passed upon by the judge without any papers, upon the statement of the parties, and that afterwards he drew them up; after the matter had passed from before him as a judge, he drew them up as a scrivener, to show them to the militia officers or some other person entitled to see them, so as to preserve a record of the causes for which persons were exempted. In respect to this last excuse, the statute under which this proceeding is taken, authorizes the judge to determine upon exemptions, and is in these words: "Any person so drafted may within five days after receiving notice of the same, present to the county judge of such county his certificate of exemption, or other proof of his non-liability to military duty, which shall be duly verified," and if such county judge shall decide that such person is exempt or not liable, he shall be discharged, and another person drafted in his place. Now the idea under that statute, that the judge decides upon the statement of an individual and afterwards reduces it to writing, and takes his oath to it for any other purpose than that of passing judgment upon the paper presented to him, seems to me to be perfectly absurd and idle. It is against the whole tenor and letter and spirit of the law. The law requires that the certificate of exemption or other proof of his non-liability, duly verified, shall be presented to the judge for his decision. The statement sworn to is the proof. The statement, duly verified, must be before the judge when he decides the case. The law did not leave it to the judges of the counties to exempt persons from a liability to military duty upon loose statements made before the judge, not required to be in writing, not required to be verified. There is no such looseness in the law. The excuse will not stand. It will not avail him. He drew the papers and swore the applicant to them, for the purpose of having something before him upon which to decide. His decision is made upon that statement, and when drawn up by another person than himself—by his partner or anybody else—it is drawn up and verified before the decision of the judge is had upon it. So that that excuse is idle. It will not bear examination. It is not in accordance with his practice, for, if you will read the testimony of Judge Smith upon that subject, you will see that persons coming there had

their papers drawn by his partner, and presented either by the partner or by the person applying for exemption on the written statement presented to him. Now, let us look a little at the other point: his ignorance of the law. Counsel upon the other side attempted to criticise us pretty sharply and severely for saying that there was a misstatement in regard to it. How is the fact? Judge Smith comes forward, as a witness, to state how these things are. He is asked by counsel, and permitted to testify, that he did not know of any statute prohibiting him from doing the things alleged against him in these charges. Why, sir, no grand jury comes before that judge that is not specifically charged that it is a misdemeanor in any public officer to exact fees to which he is not entitled by law. The county judge of Oneida county is a lawyer of acknowledged ability. He has practiced his profession for many years. He has held the office of judge for many successive years. Is it true that he did not know the statutes of the State respecting the duties and privileges of his own office? If anybody believes that he is so ignorant, or so forgetful, let him refer to the testimony of the judge upon the cross-examination, in which he admits that he knew every prohibition in respect to his practice except the one in question, contained in the same books, in the same laws with which he was equally familiar, and when you have read that cross-examination and reflect upon the standing and condition and experience of the judge, that he is thoroughly acquainted with every other prohibition in regard to his duties, I submit to the candid judgment of the Senate that the language I used in respect to it is not too strong, when I say that the excuse is false in fact; that he did know that he was prohibited from drafting papers to be used in his court; that he did know what is known to every respectable lawyer in the profession, and, much more, to every respectable judge upon the bench. But ignorance of the law in respect to this will not avail him. The rule in all the criminal treatises is laid down that ignorance of the law will not excuse any person, in whatever capacity, from responsibility for his criminal acts; for all are presumed to know the law, and I have cited authorities on that point which are not questioned or disputed by the other side. But counsel say this is a small matter. This extortion did not exceed six shillings; "*seventy-five cents*," the counsel says, "is the extent of this extortion; in some cases, perhaps, it reaches a dollar or ten shillings." Why the counsel knows enough of the laws and decisions to know that

the Supreme Court of this State, in a decided case, convicted a justice of the peace of extortion, and he suffered the penalty of the law, in a case where he demanded and received 12½ cents unlawfully for a summons. The counsel understands, for he has examined this matter, that in a decided case in Massachusetts, where the jailor of the county of Essex demanded 30 cents for releasing a prisoner from jail, the law entitling him to receive the 30 cents when he was discharged from imprisonment; but because he demanded and insisted upon his 30 cents when the man was committed to jail, instead of when he was released, although it was the practice of officers having charge of jails in the Commonwealth, that the Supreme Court of Massachusetts upheld the conviction, although they thought that it was done under a misapprehension of the law, and that the prisoner believed he had a right to the 30 cents. Yet they say ignorance of the law will not excuse him for taking 30 cents illegal fees. The courts have always looked upon the crime of extortion in public offices with no degree of allowance. No! Oppression under color of right, the unlawfully taking of any money, no matter how small, by a public officer, that is not due to him, is a crime upon which the courts have frowned. It is a matter that admits of no excuse. It is a misdemeanor. It is made so, expressly by our statute. No judge, justice, sheriff, or other officer whatever, or other person, to whom any fees or compensation shall be allowed by law for any service, shall take or receive any other or greater fee or reward for such service, than such as shall be allowed by the laws of the State; and the judges are bound to charge every grand jury that comes before them, that it is an indictable offense to demand illegal fees. If judges will permit themselves to violate that law, if they will practice extortion, if they will violate that other law, which prohibits the drafting of papers, to be used before them in their courts; if they will not regard the statute, equally sound in public policy, which forbids their partners to practice before them, they should be held to answer, however trifling or small the offense may seem to be. Take this case of Prescott, which was a case of impeachment, where he was charged with fifteen different offenses—violations of his duty as probate judge, where he was convicted only upon two of them, viz: upon the third and twelfth articles of impeachment. The third article accused him of taking $5.70, for granting letters of administration. The proper fees for the grant of letters, was about $3.50. It charged him also, with taking $39,02,

for granting a commission of insolvency, and all that was charged under the article, was probably not in excess of the legal fees, to the amount of $10. He was convicted upon that article, and convicted upon the twelfth article, which accused him of taking $5, for giving his advice to the guardian of a poor or insane person, and having it inserted and allowed in the guardian's account. He was convicted upon those two charges, and those only, and was removed from office for that extortion, for taking less than $15 in all.

Mr. SHAFER: I would like to enquire, whether in that case, it was not alleged and proven, that he had been in the habit of taking illegal fees during his term of office, for twenty years, continually?

Mr. SEDGWICK: It was not. He was found not guilty of every charge alleging the taking of unlawful fees, except the two that I have specified, and he was not convicted of taking illegal fees generally during the course of twenty years. He was convicted upon a bare majority vote upon these two specific charges. But he lost his office, and he lost it properly; because, if you will permit judges to take extortionate fees; if you will allow them to set the example to all the subordinate officers of the State; you open the flood gates of corruption; you leave the people to be plundered at will by judicial and other officers; you subject them to a peculation, small in an individual case, but which amounts to enormous sums when you take into consideration the multitude of officers that are fed upon fees obtained from the people in small sums. I say if you suffer this judge to go clear upon these charges, because they are small or seem to be trifling; if you suffer him to violate the laws which he knows to stand prohibiting his action in this case, and permit him to take pay for such services, what is the result? A county judge is intrusted with money matters of importance. All insolvent cases come before him. If he can draw the papers; if his partner can come before him and advocate the claims of these insolvents for discharges; if he can take pay for drawing up these papers, you see at once that the judge's office will monopolise all the business of that description in the community—that it sweeps the whole, because it will be precisely as it was in the applications for exemption in this case. The judge cannot specify any instance where a man demanding exemption before him, and the papers were drawn by him or his partner, went away subjected to the draft, or to military duty. They all

escaped. They all got certificates of exemption. Every insolvent who has the judge or his partner for an advocate will go through the court. It opens the door for innumerable and gross abuses, and when one of those cases is brought to the attention of the proper authority, the hands of justice should be laid upon the judge who is guilty.

I pass on to the consideration of the third and fourth charges. The substance of those charges is this. By the laws of the State Commissioners of Excise are appointed by the county court, consisting of the county judge and two justices of the sessions. A majority of the court, of which *the county judge must be one*, can appoint the commissioners. So that in all cases he has the veto power upon the appointment of anybody distasteful to him, and no person can hold the office of commissioner of excise except by consent of the county judge. In other words, he controls the appointment. This is an office of some responsibility, and some importance to the people of the State, and it was expected that this law would secure the appointment of good men. These commissioners were appointed in the county of Oneida, and should have been selected, not to promote the private interest of a judge or anybody else, but because they were good men. There would seem to be an impropriety in the judge, who had the controlling voice in the appointments of these men, holding a place or appointment under them, for more reasons than because he was in turn the appointee of those whom he had put into office. Indictments might be brought in his court for offenses under this law, and appeals probably would be, in many instances, taken to it, and, although he could dispose of an appeal by sending it (having been counsel in the court below,) to the Supreme Court; yet the object of that law was not to enable judges to practice in the inferior courts, but to dispose of exceptional cases, where, before their appointment, they had been practicing in inferior courts, without delay. The law passed for such a purpose, does not admit, in its fair and right construction, of a judge seeking a place, where he would be, in this great class of cases, employed as counsel in trying, and, therefore, compelled to lead the calendar of the Supreme Court in reviewing them. The attorney of the Board of Excise is an important office. He should be selected solely for his fitness for the place, and every one will see that in an office of this kind, no matter in what county it may be, a judge who has the appointment

of the commissioners has it in his power to *persuade* those commissioners to appoint him to this place. The result will be, if this is countenanced, that in all the counties—and it has taken place in some others—it soon will be the fact, that the judge of the county, who appoints the commissioners, will in turn receive the appointment of attorney of the board. Now, it is not contended in this particular case, that Barrows, the person holding the office was an unfit person to have the place. It was not pretended that the judge sold his office to an unsafe person; that he was not a safe counsellor; that he was an unfit person, who should not have been continued in office by the judge. There was no petitioner for the appointment of Judge Smith; it was not a public demand upon the Board of Excise that he should be appointed; no person applied to them in his behalf; but the commissioners taking him aside into the hall, when he was there upon his application for French, (having first proposed to French, by the way, that he should be his partner and divide the profits of the office with him;) but when that was refused, for some reason, perhaps for the reason that the judge has assigned here, that French was not a practising lawyer, that it was too open and absurd to appoint him; when that appointment was declined, the suggestion was made to the judge by the commissioners: "Now, if you want this office yourself, we will give it you," and after a while he obtained the office; there was no public demand for it, but it was made in that way. Now what did he do with it? Did he enter upon the discharge of his duties? Did he go on undertaking to perform its duties? Did he find it inconvenient, incompatible with his duties as county judge, and give it up for any such reason as that? The whole course of his conduct in that matter shows that he took that appointment for the purpose of making sale of it; that he sought it and obtained it for the purpose of putting it into the market; that the only thing he ever did under the appointment was to sell the place. Now, look at that transaction. He went to Barrows and sold him that place; it was a regular negotiation; he sold it to him for a fixed and definite time; he was to have it for two years; it was arranged in the meeting where he paid him the money, that he was to take such measures as were necessary to continue him in the office for two years.

Mr. SMITH: Mr. President—There is no such testimony as this. The evidence shows, instead of Judge Smith going to Bar-

rows, that Barrows went to Judge Smith; and the evidence fails to show any agreement as to the terms, but directly to the contrary, and there is no evidence that he was to take measures to continue him for two years. I sympathize with the gentleman, and hope he will not have to draw upon his imagination to sustain these charges.

MR. SEDGWICK: If the counsel will turn to page 280, of the printed case, he will find this, viz:

"Q. Was there a third person present? A. George F. Weaver. Q. Was he one of those commissioners? A. He was. Q. And did you, in consideration of that agreement, allow Barrows to keep this office, and did you destroy, or give up to him that appointment of yours? A. I gave him up the appointment; the consideration for which he paid me the $500 was, that I should give him up that paper. Q. Did you also agree at that time to re-appoint a certain man commissioner? A. I believe I did. Q. That was another part of the consideration? A. It was no part of the consideration; that was a thing started subsequently. Q. Was not that stated in the same interview in which he paid you the money? A. It was stated in the same interview."

MR. SHAFER: I want to read in that same connection on his re-direct. The counsel can proceed, I will refer to it in a moment.

MR. SEDGWICK: I think that would be the safer way, to let the counsel proceed. I do not make mistakes about this evidence. That was the first statement the judge made in respect to it before the court martial, although he has attempted to explain it at least five different times since, yet that thing stands prominent in the case, proved beyond contradiction and beyond escape, that the arrangement, although he undertakes to pettifog in regard to it, and say it was not a part of the consideration for which he received the $500. Yet it shows that one of the commissioners was invited to that interview; that he went there at the request of the parties; that he witnessed the transaction; when the question arose that the time was fixed for which Barrows was to purchase the office; when the question arose as to what security or safety he could have, that he could continue in the office for the time provided; then this question in respect to the reappointment of Weaver came up, and it was understood, although not a part of the consideration, yet it was understood and arranged that Weaver was to be continued in his office. And you will remember how one of those commissioners appeared upon the stand here, when he was asked if he did not understand this whole matter, that Barrows was to have the office for two years; that he was carry-

ing out a bargain which he had witnessed, and whether he thought it would be honest in him, having witnessed that bargain, to cut Barrows off short of that time. You saw how he appeared and what color and face he gave to this transaction.

MR. SHAFER: I now find the evidence to which I referred on page 281:

"Q. Do you say it was not? A. I think it was not; the sole consideration of the $500 was to give him up the appointment, and allow him to do the business that I might do under it."

Now turn to page 342, to the evidence of Weaver. The question there put to him:

"Q. Was there any further conversation thereon? A. After the Judge started to go out and got to the door, Mr. Barrows said to him: 'Judge Smith, you intend to appoint Mr. Weaver again.' Q. 'What then? A. I turned round and said: 'Mr. Barrows, that has nothing to do with it; I do not want you to put anything of that shape into any appointment I am to have.' Q. What did Judge Smith say to that? A. He said he had intended to appoint me long before; I told him that he had nothing to do with the matter. Q. Did Judge Smith say whether your appointment had anything to do with this attorney business? Did he say anything on that subject? A. No, sir."

That is the evidence I wanted to refer to. The evidence which Mr. Sedgwick referred to was taken before the court martial.

MR. SEDGWICK: You do not mean to say that your client did not testify to the truth before the court martial?

MR. SMITH: They ruled out his explanation of the testimony before the court martial.

MR. SEDGWICK: Now, I say this whole transaction in regard to the sale of this office is a disgraceful transaction to all the parties concerned in it, and more especially to the county judge. The first proposition, look at that. A proposition to engage in business with French, to get the benefit of this office, to get two-thirds of the profits of that office under the color of having French the prosecuting attorney of the board, and by an arrangement with him that the county judge should do the business of that office, and get two-thirds of the receipts. When this contrivance fell through of getting the appointment himself, without any pretence that he was going to act under it, he never proceeded to act under it, but merely for the purpose of trading upon the capital that he acquired in that way by selling it to Barrows; and this arrangement of bringing in the commissioner—the commissioner sees that it is a shameful transaction, and he tries before it is

accomplished to get judge Smith out of the office. But he did not succeed. The arrangement is patent. It is plain to every one who looks at it what it was, and how it was—I mean the substance of the thing. The commissioner himself admits it was an arrangement that he was to have the office for two years, that that was the purpose of it.

MR. SHAFER: He expressly denies that there was any such arrangement as that.

MR. SEDGWICK: The counsel is again mistaken. If he will turn to the evidence of the commissioners he will see what he understood.

MR. SHAFER: He swears there was no such arrangement. He said if he could hold it two years longer, he could "get himself in shape."

MR. SEDGWICK: Turn to the cross-examination of Mr. Weaver, page 343:

"Q. Mr. Barrows is a friend of yours? A. Yes, sir. Q. How many times do you think he came to see you after the appointment of Judge Smith? A. I think he came there twenty times. Q. Who asked you to attend the meeting between him and Judge Smith, at his office? A. Mr. Barrows. Q. Did he tell you what was to be done beforehand? A. Yes, sir. Q. Did he tell you the terms of the bargain by which he bought the office of Smith? A. He did. [Mr. Shafer objects to the term "office."] Q. What did he say he was to give for the office, or place? A. He came to my house and wanted I should go to Utica; I told him I could not go; I refused to go to Utica at first; finally he insisted upon my going, and said he had made arrangements with Judge Smith to give up the appointment; I consented to go; I told him I would be there at the office at such a time. Q. Then you went to his office by appointment? A. Yes, sir. Q. Expecting to meet Judge Smith there on the business of the purchase of this place? A. Yes, sir. Q. And you knew what the terms were? A. I did. Q. You went there at that time? A. I did. Q. And found these parties there? A. Yes, sir; I think they were there when I got there."

So that the meeting was by appointment—the commissioner and the judge, and the party to the office, were there by appointment.

MR. SMITH: That proves a meeting between Weaver and Barrows.

MR. SEDGWICK: I continue to read:

"Q. Were the terms of this purchase then talked over between you in their presence? A. I think not, sir; I do not think there was anything said after we got in; they seemed to understand what they were doing. Q. Did you understand it? A. I did, from Mr. Barrows. Q. And they went to work, counting the

money after you got there, without anything being said? A. Yes, sir. Q. How long did it take? A. Judge Smith was not there long; I was there after the judge went away."

MR. SMITH: It was the answer just before where you commenced reading; I think that is the one you refer to.

MR. SHAFER: It reads thus: "He said if he could hold it two years longer, he could get himself in shape.

MR. SEDGWICK: Let me read from page 347.

"Q. How long was the talk that Barrows was to have it? A. I do not know of any talk how long he was to have it; he could be removed the next day. Q. You would not have considered it was fair to remove him the next day, having seen him pay $500 for it; you would not have considered that according to the spirit of the agreement? A. If the commissioners had anything to do with the agreement, I would not; but I do not know that they had anything to do with it. Q. Yourself having seen the money paid, you would not have thought it was according to good faith to have him turned out next day would you? A. I think it would be right for him, if he had been turned out the next day. Q. You think it would? A. I think so. Q. Did you suggest that to the board, that you had seen him buy the office, and it was not right to keep him in it, when his name came up for reappointment? A. I did not. Q. Did you think it right at the time? A. I do not know that I did. Q. You thought then it was right that he should have the fruits of his bargain? A. No, I think not; if he had been turned out next day it would be right. Q. But you thought then it was right that he should have the fruits of his bargain? A. I do not know that I thought anything about it."

MR. SHAFER: Does the counsel now withdraw his statement that there was an understanding for two years?

MR. SEDGWICK: I do not withdraw it.

THE PRESIDENT: The chair understands that the counsel read the testimony and the Senate will understand what it is.

MR. SEDGWICK: Now, passing from the question whether it is a fair and proper transaction for a judicial officer to engage in, I come to the next charge, the 5th, which is a transaction in regard to letting Norton to bail. It appears to have been a practice, sanctioned by many of the judges of the State, to allow persons charged with crime to enlist into the army, taking recognizances for their appearance, with the understanding that an enlistment in the army was to be a protection against the forfeiture of their bonds. Without stopping to enquire as to whether this practice was right or wrong, justifiable or unjustifiable, it would probably protect a judicial officer, like the respondent, in such a transaction

as that, and would be a sufficient excuse against any claim to remove him; that the example of other judges and the general assent of the community had sanctioned such proceedings. I, therefore, make no complaint against Judge Smith for the fact that he admitted Norton to bail. If that was the sole transaction I should pass it in silence. But there is more in respect to this matter. The man who applied for Norton's being let to bail was his partner. It was understood by Judge Smith, certainly, that the money—the local bounty going to the soldier—was to go to his partner. It was the well known practice of the county that the bonds taken under such circumstances were not to be estreated and prosecuted, and, therefore, the form of entering into bail involved no responsibility. The result of the transaction, so far as regards the partner of the judge, was to give him the six or seven hundred dollars, which was the local bounty; to give the whole of that bounty to him under pretense, and perhaps without any such pretense, of keeping it as security against liability upon this bond. It appears that this man had been brought up before Judge Bacon and remanded. He was not bailed. The recruiting officer would not receive him and pay over his bounty—his local bounty to the person producing him. He was remanded. An application was made to Haddock.

Mr. Smith: The gentleman is inaccurate in his statement. That was not the objection of the recruiting officer. There was no local bounty raised at the time. He refused to receive him on the ground that he was charged with a felony, and he supposed he could not muster him under the act of Congress.

Mr. Sedgwick: Let it be that way if the counsel chooses. That is not the important part of this matter. Haddock was advised of the condition of things by letter from Judge Smith or his partner, and he (Haddock) suggested that the money should be sent to Elmira, but that would not answer the purpose, and Judge Smith writes another letter to which I desire to call the attention of the Senate. Pages 426 and 427.

"My Dear Haddock: Allow me a word further in explanation of the matter of the enlistment of Charles E. Norton, which, perhaps, has been miscarried. Norton proposes, in consideration that Utley bails him out, and in consideration of his other services, to volunteer, and to give Utley such bounty as may be obtained hereafter from the county on account of his enlistment—as between the volunteer and the government, the case is as if he enlisted without local bounty—he having of course all the United States bounties given in such cases.

"The proposition in your letter as to sending the money to Elmira, to be held by you, would be entirely satisfactory if the money could be obtained, but the county has not as yet made any provisions for raising the money, &c. No bonds will be issued for some ten days; of course Utley cannot raise the money and advance it on the contingency of the recruit's action at Elmira, when he might finally interpose difficulty.

"I do not see why the man can not be mustered in. The Government is to lose nothing even if the recruit should desert, and Utley will see to it personally that Norton is delivered at Elmira, and no credit would be given the county until he is delivered.

"The whole arrangement is at the express desire of Norton, who fully understands his rights."

Now, you will see that the question between them was as to where the money should go. Haddock wanted to put his hands upon it. That would not answer the purpose of Utley, and the letter of Judge Smith—the whole argument of the letter, is to allow Utley to retain this money. Now, did Judge Bacon understand there was any such thing about this man's enlistment. Utley swears he did not tell him anything about this. Would Judge Bacon have permitted an application from his partner, or his clerk, or his friend, to influence the Provost Marshal General, to put five or six or seven hundred dollars of bounty into his hands, or into his friend's hands, and he to be made the instrument of bailing this man upon any such consideration as this. The point which is complained of is this—which the counsel in his argument yesterday avoided entirely—he did not deign to say one word in respect to the corrupt application of this money, the retaining it for the benefit of his partner, and taking out of the recruit the whole amount of his local bounty, sending him to the field to encounter danger, and the partner of the judge lining his pockets with the bounty money. There is the difficulty in the case. It is not that Norton was let to bail. It is not that he followed the precedents of Judge Bacon or other justices, in admitting criminals to bail on condition of their entering the army; but the corrupt motive with which it was done, the endeavor to secure what belonged to the recruit who ventured his life in the service of his country—to secure that money to his partner. He says he has never received any of it, their partnership affairs are yet unsettled.

Mr. SHAFER: What guarantee had Utley against liability on that bond?

Mr. SEDGWICK: The testimony of the district attorney, whom they call upon the stand, shows that it was the custom of

the courts of the county to refuse applications of the district attorney to estreat bonds in such cases.

Mr. SMITH: Suppose Norton had run away before he got to Elmira?

Mr. SEDGWICK: It was not the keeping of the bond that we complain of. What we complain of is, it was an arrangement by which Utley secured all the money. And as to the security against desertion, Utley takes upon himself to employ a man for $50 to deliver the recruit at Elmira, and then his reponsibility against desertion ceases. He was not under any obligation that the recruit should go to the field; that he should not desert, only that he should be delivered at Elmira, and that at an expense of $50 paid to one of the public officers for taking him forward there, out of the $600. He got possession of that money and retained the whole except the $50 which it cost to get him there. Now this may seem right compared with the enormous crimes and plundering of the last five or six years. It may seem a venal offense, but if you desire to preserve the judiciary of this State against suspicion of corruption; if you desire to retain the confidence of the people of the State in the intelligence and integrity of its judiciary, you must lay your hands upon transactions of this character. They are not innocent; they are not honest; they are not free from the taint of corruption. But I pass on. I am taking too much of the time of the Senate. I pass to the discussion of the sixth charge. Preliminary to the discussion of that, it may not be improper to call the attention of the Senate for a few minutes to the character and relations of the sole witness for the prosecution, as well as on his own behalf, with the accused Haddock. He was his counsel and his friend. He testifies under the bias which those relations will bring about. He testified on the court martial from questions which had been carefully prepared by himself beforehand. He was the counsel upon that trial. He prepared the interrogatories upon which he was examined, and if you look at the last one you will see they are prepared with great ingenuity. At page 253 there is this testimony:

"Have you ever received from Major Haddock, or ever been led to expect from him any valuable consideration for anything you ever have done in the way of assisting in getting recruits or filling quotas? A. Never."

But you will see that that carefully prepared question of the judge, excludes entirely what he received as counsel for Haddock against Richardson, that being the only service that he had ever

rendered Haddock. But counsel complain that he was not allowed to explain; that he was cut short in his examination before that court martial. Look at his testimony in regard to Norton's case. He testified in respect to Norton's case at the pages I have mentioned, 282 and 283; he testified again in explanation of it, at page 286; he testified a third time in further explanation of it, at pages 289 and 296. In respect to Barrows' case, his examination was at page 283; he was allowed to explain again, at pages 286 and 287. And as to granting exemptions, he was allowed to explain in regard to that. Not satisfied with this, when we rested this whole case upon his testimony—upon the reading of his deposition, he was put upon the stand, on this trial, to explain further. Probably the only instance in all the records of trials of this kind, where the accused has been permitted to testify in his own favor, and I say that these complaints of counsel as made against the treatment of judge Smith—that he has been cut short in his explanations—that he has not been allowed the full benefit of all the legal rights which a person in his situation could have in respect to this trial, are altogether mistaken. He has had every facility for explanations. I do not believe that the counsel expected, when he offered him as a witness, that he would be permitted to testify before this Senate. But we desired to throw no impediment whatever in the way of the fullest explanation that the judge could make of the charges that were preferred against him. In respect to such matters I have always believed that truth is consistent with itself; than an innocent man, in telling a story, falls into few difficulties; but, on the contrary, guilt is full of pitfalls and inconsistencies, and that a guilty person can never be too silent. If this man is innocent of the crimes alleged against him, we do not desire his conviction. There is no malice in this prosecution, prompting us to desire the conviction of an innocent man. If guilty, there is no objection to his convicting himself upon his own statements of his own case. If he testified under strong bias in the Haddock trial, he does so under still stronger bias and feeling now. He reëxplains all matters of which he is accused, and has the benefit of all the excuses which existed, or which he can invent. He has the suggestion of able and ingenious counsel. He appears here as a witness before this Senate. He is an able men. He is wary, cool and collected, but is he candid? Is he truthful? Is he honest? Does he prefer sometimes a sharp, smart answer, that will put counsel down, to a more modest, fair and

truthful one? A witness anywhere, in high station or in low, in important trials or unimportant trials, who dodges and prevaricates is not entitled to full and perfect credit. The law is, and it is the law of reason no less, that a witness false in one thing is false in all. Let me cite a few examples of the character of this witness. In the trial before the court martial he is inquired of as to the character in which he acted for Richardson. If the Senators will take the trouble to read his examination, at page 251 of the case, they will see the drift of the inquiry there was to show that Judge Smith was to have his pay out of the profits of the business; that there was a bargain between him and Richardson, by which he was to share in the plunder of the public by that bounty broker. The judge saw that. His perceptions are quick; he saw the drift of the examination, and when he is asked in relation to that, whether there was not some such arrangement between them, he denies it, and says that he acted as attorney; that he was acting as the attorney of Richardson. Well, time passes on, and he is called upon the stand again to explain in regard to the same matter. The drift of the enquiry, in the next place, was to show that when acting as attorney for Richardson, he betrayed his client; did not deal honestly and fairly with him; that he was guilty of deceit in respect to the interest of his client. How does he state them? He denies in just as positive terms as he stated it before, that the relation of attorney and counsel existed between them. He says he acted as the agent, not as the attorney, not as the counsel of Richardson. Then look at another transaction. In the course of the winter Smith had a pretty active correspondence with Haddock; several letters passed between them.

Mr. SMITH: Four, the testimony shows.

Mr. SEDGWICK: If the relations between them were honest and fair, these letters would be a necessary part of the history of the case, to show that they were fair and honest. Honest business men in the ordinary transactions of life, preserve their business letters for their protection. What became of Haddock's letters to Smith? They were destroyed; they were burned.

Mr SHAFER: Do you mean to say all of them were. He said some were destroyed, and some were among papers at his office?

Mr. SEDGWICK: They were destroyed. They were put out of the way. For what purpose? For a fair and honest purpose, or for the purpose of concealment? That his letters should not

go into the public records with the telegrams and letters to Richardson to assist in the conviction of his friend, or assist in his own conviction of guilty complicity with him. Look at his story in regard to his first journey to Rochester, that he was going that way for mere convenience; that the meeting with Aaron Richardson at Rochester was an accidental meeting. His forgetfulness as to where he met Hoard, this bearer of the order from Haddock for the delivery of $20,000 of bonds to his client Richardson. He did not know whether he was in the car with him from Syracuse. How surprised the Judge must have been when he met Aaron Richardson at the depot at Rochester *accidentally!* How surprised he must have been when he took him to the Osborne House, and, at the conclusion of this business, paid his bills and sent him on his way to Utica. I say that the witness who attempts to deceive his triers by prevarication of this kind, by cunning attempts to destroy the course of events, by cunning contrivances to show that what was really the flood and course of guilt, was a mere accident, that his testimony must be examined carefully, cautiously and prudently to see what it means, and what conclusions it will bear. What became of Hoard after this meeting at Utica. At page 268 he denies expressly that Hoard went with him. At pages 367 and 368 he says expressly that he did—that he went to Auburn with him.

MR. SHAFER: Oh, no; to Rochester from Elmira.

MR. SEDGWICK: At page 268 he is asked:

"Q. Did Hoard go with you there? A. No, sir. Q. Where did he go? A. To Utica. Q. From Auburn where did you go? A. To Utica."

Now turn to pages 367 and 368. This is in his explanation I read from the bottom of the page.

"By the way, at that time Haddock had sent by Hoard an order to obtain twenty thousand dollars' worth of bonds that were lodged in the office at Utica. His expressed object to me for so doing was, that he believed that Richardson might otherwise get hold of them, and, as a part of his scheme, he was proposing to get hold of those bonds and get them into his own possession. When I got back to Utica, *to which place I returned with Hoard*, Richardson wanted me to return immediately."

There is nothing in it about going from Elmira to Rochester. At page 249 he says he went to Elmira on the 29th of March for McIntosh. At page 389 he says that he went for McIntosh on the 3d of March; he staid two or three days and returned together

by way of Rochester. Now look at page 396 to show the manner in which this witness answered.

"Q. Did you say to Richardson that if he sent the papers with the money you would get the orders for him? A. I held out that encouragement. Q. Did you not say so in terms that if he sent the papers with the money he would get the orders? A. Probably I did. I cannot say I said so in terms, but I probably said so in substance. Q. Was that true? A. That he would get the orders, do you mean? Q. Yes. A. I did not think he would get them."

MR. H. C. MURPHY: What orders were those?

MR. SEDGWICK: The orders after the 4th of March. The orders specified in Collins' memorandum.

MR. H. C. MURPHY: What were those orders?

MR. SHAFER: That does not appear.

MR. SEDGWICK: It was that he could get an order allowing men to be recruited at Utica for the other parts of the State, and others set forth in the written memorandum. I read further:

"Q. It was a fact that when you told him he would get the orders if he sent a bribe large enough and the papers, you did not believe it? A. I did not believe he would get them, and I did not mean he should either. Q. So you meant to betray him and lie to him at the same time? A. You may characterize it as you please. Q. Did not you mean exactly that—to betray him and tell a lie at the same time? A. I did not mean to betray him. I did not consider he had anything to betray. I considered him a public enemy, and an enemy of Haddock's, and that every means ought to be used in a proper way to foil his scheme."

Now it did not require, as my learned friend stated, any middle man to negotiate between Richardson and Smith. It required no such intervention. They acted together, and acted together throughout. And it has sometimes been supposed that an attorney or counsellor who undertakes the defense of a man, whether it is a good case or a bad case, owes him a certain duty. If he accepts the situation of attorney or counsellor at all, he is bound to good faith and integrity in his relations to his client, whether his client is an honest man or a villain. The statute seems to require that. It says:

"That any counsellor, attorney, or solicitor who shall be guilty of any deceit or collusion, or shall consent to any with intent to deceive the court or any other party, shall be deemed guilty of a misdemeanor, punishable by fine."

Now, that a man is a public enemy, does not authorize an attor-

ney to betray his secrets; nor because he is an enemy of Haddock has he a right to betray or desert him, if he pretends to be his counsel. But time enough has been spent upon that. I merely refer to this instance for this purpose: to show that we have a right, in considering this case, to give a fair and probable construction to suspicious circumstances, even if the witness in his own behalf forgets them, or absolutely denies them. In 1864, when these transactions between Smith and Richardson commenced, we were in the fourth year of a very great, distressing and expensive war. It had become difficult for the Government to raise troops. A draft was threatened. Large bounties were offered by the various localities in the State, and these bounties originating in the necessity of raising volunteers for the purpose of avoiding a draft, and difficulties which it was foreseen would be contingent upon it, gave rise to many frauds, and it brought into existence a set of men known as bounty brokers. It brought into existence a set of men not worse in their characters, known as bounty jumpers. There was a call for 300,000 men in December, 1864, I think, and about the same time this man Haddock was appointed Provost Marshal General of the Northern District of New York, in which was the county of Oneida. Haddock and Smith had been friends. So the counsel says, and so I believe the case shows. Upon his appointment he had an interview with Smith at Utica. Aaron Richardson about this time comes upon the stage. Who is he? What knowledge had Smith of Richardson? He says he had known him before as a bounty broker, engaged in that business. He states his knowledge of his character and of his pursuits. He says:

"I knew Richardson was a man who would desire to get things *clear to the verge of the law, and beyond.*

"Q. How long had you known that of Richardson? A. I knew that he was a bounty broker, and had been engaged there in that business.

"Q. How long had you known him to be such a man as you have described? A. I did not know it, I suspected it.

"Q. How long had you suspected it? A. I knew it to my own satisfaction.

"Q. How long had you known it to your satisfaction? A. I supposed him to be that from the fact of his being a bounty broker.

"Q. How long had you thus supposed or suspected? A. From the first time I heard of him, the preceding fall."

So that, in all his after connections with Richardson, he acted with his eyes open, with a full knowledge of the character, stand-

ing and occupation of Richardson. Who was Collins? He comes upon the stage. He was a clerk in Smith's office.

MR. SMITH: No, sir.

MR. SEDGWICK: He knew him. He had a desk in Smith's office. He was a clerk, perhaps not of Smith.

MR. SHAFER: He paid part of the rent of the office.

MR. SMITH: He was in his own office. He paid a portion of the rent.

MR. SEDGWICK: Smith and Richardson were brought together by this man Collins. Why did Richardson want to see Smith? Was it on account of his relations with Haddock—his very friendly relations with Haddock. What did Richardson want? What did he seek by thus coming in contact with Smith? He wanted facilities in his business. He so stated to the judge. He wanted certain specific orders for the purpose of advancing his interest. In the first place, he wanted an order allowing Collins to make out papers outside of the provost marshal's office and in his own office. Why did he want this? Because it would enable him, without bringing the recruits in contact with the officers in the provost marshal's office, so that they could not be seen and identified by these public officers. He wanted their papers made out in his own office. It would facilitate his business. He wanted men to be allowed to go forward with three-eighths instead of five-eighths of their bounty. Why? Because there was a quarter more of the bounty which was subject to the plunder of the bounty broker, and with a view to reduce this, as he finally did, to $50, and finally to nothing at all after his acquaintance with Smith and Haddock. If he could do this, why so much the more would the enlisted man be subject to the plunder of the bounty broker. Smith keeps admonishing him that he must not ask anything improper; that he must keep within the law; that Haddock could not violate his duty; that he (Smith) could not ask him to violate his duty.

MR. SMITH: I do not think this sort of mis-statement should be made without correction. There is not a word of testimony that he kept admonishing him. There is not a word of evidence of any connection between Judge Smith and Mr. Richardson, in reference to reducing the bounty to $50, or reducing it to nothing. It is confined to the single transaction of the 9th of January, to procure two orders that are mentioned, that were never delivered and never used.

Mr. SEDGWICK: I think if I misstate this evidence the Senate will be able to correct any error. The Judge is very modest, but turns out to be as yielding as the maid "who swearing she would ne'er consent, consented." He did consent to go to Elmira for this man whom he knew was asking for facilities to the very verge of the law and beyond. He did put himself into communication with Haddock upon his affairs. He did go there for the purpose of obtaining these orders to facilitate Aaron Richardson in his business. How did he do it? Was it as attorney or as agent? Did he do it with a view to the public good. He says he expected to be compensated *liberally* for his services. Although there was no special contract, he expected to be liberally paid for his services in this matter; and yet he did not expect to do anything—did not expect to ask anything for Richardson. That is the effect of his testimony; but we will see. Much has been said about his poverty—that he is a poor man;—that it was his poverty and not his will that consented to all this iniquity. I say he was induced to do it by his cupidity.

Mr. SHAFER: I submit there has not been a word of that kind either in the evidence or stated by the counsel for the defence in this case.

The PRESIDENT; Counsel always push the testimony to the very verge of what it will bear, and that the tribunal must judge between them.

Mr. SHAFER: I submit when he says that his poverty induced him to consent, that that is a statement of fact.

The PRESIDENT: I do not understand the counsel to say as much as that; but a great deal has been said about his poverty, and it was alleged that he consented on that account.

Mr. SHAFER: That it was alleged in consequence of that.

Mr. SEDGWICK: This vice of cupidity has reached higher places and seized on nobler victims than Judge Smith. He yielded as others had yielded. You will remember that the great Cardinal Wolsey once transmitted to the King a list of his estate and property which he acquired while holding his high position as Lord High Chancellor of England. He had inclosed it, by a fatal mistake, in a packet of state papers which he had intended to submit to the King. This inadvertance, disclosing not only the list of treasures which he had heaped together, but his secret intrigues with the Pope as well, unsealed the eyes of his master and put him into the power of his rivals and enemies. And so the great

Wolsey, a man of noble faculties, of cultivated mind, of qualities vastly superior to the men of his time—a man

> "That once trod the ways of glory
> And sounded all the depths and shoals of honor,"

fell a victim to avarice and ambition.

Now see what this virtuous, incorruptible and twice-elected judge does. He might have better rewarded the public confidence, if he had followed the wise counsel to

> "——————————— do justice
> For truth's sake and his conscience; that his bones,
> When he has run his course and sleeps in blessings,
> May have a tomb of orphans' tears wept on 'em."

But he chose a far different career. Hogarth, in his inimitable pictures illustrating the course of the idle apprentice, has not pointed out with more clearness and precision the downward path from the shop to the prison, and to the executioner's block, than the path of wrong was trod by Judge Smith from the time he entered into negotiations with Aaron Richardson; from the time when he forfeited the respect of his constituents, and lost the character which he had sustained as an upright and impartial judge. Take up the course of that transaction in its various steps, and see what you find. On the 9th of January, 1865, he made his first journey to Elmira. He was delayed, and Richardson started afterwards, and he got there before the judge. The judge saw Haddock, and got from him the specific orders for which he was sent. I say that the results of that journey, and that interview, put Richardson upon such a footing with Haddock, that he went on obtaining just about such orders as he wanted. Having ascertained the exact measure of Judge Smith's incorruptible friend at Elmira, he went on taking such means as he knew how to use, and with such a man as he knew would receive what he intended to propose, until the whole county of Oneida, groaning under the taxation which was put upon it by this man, asked for relief.

Mr. SHAFER: There is not a partical of proof of that.

The PRESIDENT: It does not appear that the counsel has stepped aside from a proper course of argument.

Mr. SEDGWICK: It is contended that these orders were not delivered to Richardson; but it is not pretended that from that moment Richardson did not have the benefit of these orders. Whether they were communicated to the principals in the letter

which Judge Smith brought back, or whether the substance of the orders was given to Richardson, or whether they were sent in the usual mode of communication from the Provost Marshal's office at Elmira, to the inferior office at Utica, certain it is that these rules prevailed. Collins did make out papers which were used in the office at Utica, and men were mustered in, receiving three-eighths of the local bounty. What was the result? What any man could have seen. Precisely what Aaron Richardson intended it should be. The result was that the Government secured the enlistment only of bounty jumpers. Do you know how these things are managed? On a trial that I attended before the District Court of the United States, at Utica, it was proved that these men went by car loads from Little Falls to Buffalo, taking the night train up, enlisting and remaining through the day time, and returning as deserters the same evening, putting a portion of the bounty into the hands of the broker who used them, and then the same thing was repeated, by the same men—who made a regular business of it through the summer, and the same thing occurred in all these places where these bounty brokers were dealing. They did not intend that the men should go into the service, and the contrivance was, to get just as little money retained by the United States officers to be paid to the recruit as possible, that the residue might be as large as possible, which should go into the pockets of the bounty broker. These men who were enlisted under these circumstances, were not men who intended to go into the service of the country. They knew what the bounty was. They would not be satisfied with three-eighths of the bounty and allow the rest to go to the bounty broker if they were honest recruits. The whole scheme was to get men into the service whose business it was to desert, pocket the money, and divide it with their friend, the bounty broker, and the result was to cheat the Government of the United States. And this was the scheme, worked under the manipulation of this man, under the facilities which Aaron Richardson acquired through Smith of Haddock. It worked admirably at Utica, so that Haddock was enabled to telegraph that nobody but theives and bounty brokers was being enlisted in the office at Utica. A state of things brought about by his own corruption, induced by the advice of Smith, acting as the counsel and advocate, under the suggestion of this notorious bounty broker, Richardson, whom he knew before he entered into his relations with him, was a man precisely of that stamp and

character. Now, what is the next step? It is an effort to obtain a wholesale job from the supervisors of Oneida county, to fill the whole quota of the county. Smith was in this. He went to the supervisor, Preston, in relation to it; he talked with the supervisors in regard to it—the filling of the whole quota of the county. Then came Haddock's telegrams about this quota—"it stands at 2088!" when it was really a little over 700. I need not stop to read these telegrams. You will remember those of the 24th, 25th and 26th of January. They were intended and designed to advise Richardson, who by that time had full possession of Smith and Haddock, and did advise him as to the real state of the quota of the county, so that if he could get a contract for filling the quota at 1,044 men, when in reality it was only 738, he would make, there being a difference of 206 between the real quota and that which was telegraphed, if the bounty was $700, $144,000 out of the transaction. It was in connection with this that this paper respecting the credits of the county was sent, about which there was such enquiry afterwards, and which Haddock tried so hard to get back through his friend Smith. In the meantime this incorruptible Judge, having got a smell of money, goes into Jefferson county with the view of getting into the business of bounty brokerage there, and he telegraphs back to his friend Richardson in respect to it, go a little further. On the 6th of February another transaction comes to light. Collins went to Elmira on that occasion. He took with him some $2,000 in money which he left with Haddock, and in respect to which that remarkable receipt was given. The Provost Marshal General receives a package of $2,000 from a man who did not owe it to him, who had not any money transactions—any honest money transactions with him. Instead of giving it back to Richardson's messenger, who at the same time wanted various orders for his benefit, and putting him into the guard house as he ought to, he sends back a receipt saying he received the money; that he did not know what to do with it; that he has put it into the banks where it will remain until he gets further orders concerning it. But he returned with what? He returned with two letters, one signed and one unsigned. The letter that was signed was to the Provost Marshal at Utica; and says:

"I shall very soon forward you six to eight more men to act as guard. In the case the sergeant whom I shall forward with the men does not prove to be a perfectly reliable man, you will not fail to report the fact to me, to the end that the man may be

changed. You will use every effort in your power to guard against desertion. I wish you to understand distinctly, that when a man is enlisted and mustered, the credit for that man is due to the locality for which he enlisted. I shall in no case order a credit to be revoked, unless it shall appear that the local county committee were parties to a positive fraud.

"For that reason you will use every precaution to get your men delivered at the rendezvous after muster. As regards the seventeen men delivered here, with only fifty dollars each in their possession, much complaint was made by the commandant of the rendezvous camp. If the men, however, agreed to go for fifty dollars each, there can be no just cause of complaint. It would probably be much better for the service if men would volunteer to go *for no money* at all, but influenced by *patriotic motives.*"

Here on receipt of $2,000, from a man who has insisted on having these recruits received for no bounty at all, he writes this to his subordinate. He sends a guard. What was the object of the guard? Why it is to put on a show that they were taking care of the interests of the public, while at the same time he is taking those very measures which he knows will induce desertion, and will stimulate bounty brokers and bounty jumpers to plunder and rob the public, and keep men from going into the army. He sends those two things forward together—a guard for nothing else except to make a show, and these orders which are intended to produce just the contrary effect. Now look at the letter that was unsigned, and which was sent at the same time, and you will see the true character of this transaction—bearing the same date of February 6th:

"AARON RICHARDSON: From present appearances it is quite probable that 25 per cent of the quota under present call will never be called for. Consequently, if you have contracts *to fill quotas* of sub-districts positively made, great benefit will thereby accrue to you. 'Joe' shall be attended to. None of the other counties, save Erie, are in the same condition as Oneida, and I do not think you could get a contract at Buffalo."

MR. SHAFER: There is no pretense that Judge Smith ever knew anything about it before March, is there?

MR. SEDGWICK: My impression is Judge Smith knew all about this transaction from beginning to end.

MR. SHAFER: Is there any proof of it?

The PRESIDENT: The Senate will judge whether there is or not.

MR. SEDGWICK: This gave Richardson an opportunity of allowing the officer at Utica to muster men for $50. It gave

Richardson an advantage of all he could get from $50 to $700—$650. I believe before this time, this cutter and robes, this fast horse, trappings and appendages had gone forward to Haddock. The next step is a journey to Elmira on the 3d of March. The state of affairs had changed a little then. The officers at Utica, so far as appears from the case, were striving to get men properly enlisted. Crandall, among other things, had insisted that Richardson had delivered certain bonds, also McIntosh and other bounty brokers delivered him certain bonds as security. He had $20,000 of the bonds of Richardson,—how many of McIntosh does not appear. What occurred? Smith went there upon McIntosh's business as he says in relation to these bonds. What occurred at Elmira? Haddock, as he says, disclosed all these transactions with Richardson. From that period there is no question or doubt upon his testimony that he knew all about it. The improper and corrupt relations existed between Richardson and Haddock. They took counsel together; he staid there two or three days. They determined on their course, and what was it? First, they would attempt to intimidate Richardson. For that reason this telegram was prepared to Fry. Whether it ever went to him or not I do not know as it is disclosed in the case, but perhaps it did; it went forward to him; who is Fry? what did he do? Why he is the distinguished mathematician and general who presided at the head of the recruiting service of the country, whose figures followed each other in such rapid succession in respect to the quotas of the different localities, that he could not tell anything about it himself or anybody else, and who suffered these things to go on until something more than a suspicion settled upon that office—that it was not much better than Haddock's, at Elmira, and that the two men were a great deal better friends than they ought to be. Then went a telegram to Scott at the same time, or on the 6th, two days afterwards, warning him of Aaron Richardson. Scott was the recruiting officer at Oswego. The other branch of their proposition was to coax and buy Richardson. These telegrams were sent to intimidate and frighten him. Hoard comes into the play on this occasion, and he is sent to Rochester with an order on Crandall for these bonds. Having that in his possession, Smith went to Rochester, not because it was a convenient way home, but because he knew that Richardson was to be there. His meeting was not an accident. He went with Hoard. He parted with Haddock at the cars. He

knew the order which Hoard had. He knew Aaron Richardson had an appointment to meet Haddock at Rochester, and he went there as Haddock's friend and counsel, and at the same time that he was plenipotentiary of Haddock in regard to that matter. He supposed, that being at the same time the counsel of Richardson, he could influence him and bring him to Haddock's views. He went there to act a double part. Probably he could not have done it so well if he had kept entirely sober, but he got a little intoxicated. Counsel objects with very strong emphasis against my calling it drunkenness. He indulged in liquor some; he says he was a little intoxicated. Perhaps a man ought to be, to be able to see double, who is acting for two clients at the same time.

Mr. SMITH: Does the counsel claim that that is sworn to by anybody?

Mr. SEDGWICK: I claim that that is sworn to by Smith.

Mr. SMITH: That he was intoxicated?

Mr. SEDGWICK: That he was intoxicated.

Mr. SHAFER: Let us see where is it. I wish you would turn to it.

Mr. SEDGWICK: It was here. He said he accidentally met Richardson. Richardson was angry. Why? Because Haddock was not come. Was this meeting an accident or was it prearranged? It needs no special light to see how this thing was brought about. They spend the Sunday at the Osborne house. The letter to Haddock was written, which the judge read and which he forgets all about. Forgets an important matter, where we say this proposition about the $5,000 originated. But the judge's memory has failed, and he cannot remember anything about it. They arranged a further meeting. Negotiations were held there in respect to these papers, of which Judge Smith had just received information from Haddock. In regard to the papers, the letters and telegrams here proved, he says that he was without any specific knowledge of what they contained, but that Haddock had disclosed this case to him; that he had put himself into the power of Richardson; that he had sent telegrams and letters and papers to him which more or less compromised him, and he desired to get those papers back.

Mr. SHAFER: What page do you refer to?

Mr. SEDGWICK: I read from page 265.

Q. Do you recollect it at all? A. I cannot say? Q. Is there any particular reason why you do not recollect? A. I do not

know of any? Q. Were you intoxicated upon that occasion? A. I do not think I was. Q. Did you tell Collins you were? A. I did not. Q. Do you say you were not at all? A. I cannot say I was not at all. We indulged in liquor some.

MR. SHAFER: Now let me read it.

"Q. Do you mean now to say you were not at all intoxicated upon that occasion? A. I do not think I had drank liquor enough so that I did not have my complete recollection and powers of mind in every respect."

MR. SEDGWICK: I was going to say the counsel upon the other side had exhibited unusual sensitiveness on this subject of drunkenness. What was put into the points on that subject was put into it very innocently, and with reference to this testimony; one of the counsel treated it as if he considered the whole question of drunkenness a very trifling matter about which nothing ought to be said, and referred to the example of the Senate and others as countenancing that idea. The other counsel took it in a different mood, and I was sorry to disturb his equanimity so much. A rising young man, just admitted into the counsels of the State, coming into the Senate Chamber, and with epithets which certainly are not in common use among gentlemen, and which I rather think are better fitted for the atmosphere of the bar room, and the use of its disputants, than for counsel arguing in important cases in a court of this description. But here is the evidence upon the subject. Now, I submit, take Smith's own statement of what occurred there, that they had indulged in liquor some; that he was there negotiating with these notorious bounty brokers; that he there arranged another meeting between Richardson and his principal; that he was there reading these letters—this letter that had been written from Richardson to Haddock in respect to this transaction. That, taking all things together, it would have puzzled a man of ordinary capacity and understanding to say "which was the justice and which was the thief." They were pretty well mixed in together. He would have been quite as much puzzled as the man in the play to distinguish between them. But Richardson saw his advantage—that he commanded the situation. They went off to meet again at Utica. Smith went by the way of Auburn with Hoard. Now, then, how was this telegram to Scott to be got along with? They had telegraphed to him that Richardson wanted facilities to enlist men at Oswego for his districts. He had filled the quota at Oneida, and he wanted to go into another district to enlist men. Scott was warned against him. An order is obtained

by which he was allowed to muster men in at Utica for other parts of the State, and thus the telegram to Scott, warning him about Richardson, was deprived at once of all its sting and was entirely harmless. They go back to Utica, and on the 9th of March Smith telegraphs again to Haddock that every thing is right; that he is coming on there with the documents. What did that mean—"all is right?" We say it referred to this letter. He had not got any papers. If he got any documents it was the seven-thirties which he took to carry afterwards to Haddock. But, in the mean time, a new marshal at Utica had been appointed and required new instructions. So there was another telegram on the 13th, and there was an answer. And to show the animus and purpose of this transaction, these men in sending these telegrams to Haddock, instead of doing it by the ordinary method, sending them from the office where they lived, sent them up to Rome to be telegraphed from there, and had the answers sent to Rome. Were these innocent men, engaged in innocent transactions in which secrecy was not required? Or were they sent in this way for the purpose of carrying on in the dark matters which they knew were of a guilty import?

Mr. Kline moved that the Senate do now adjourn,

Which was carried.

THIRTEENTH DAY.

Albany, Thursday, *January* 17, 1867.

The Senate met pursuant to adjournment. Hon. Stuart L. Woodford presiding.

The proceedings were resumed as follows:

Mr. SHAFER: This morning a letter was handed to me from my associate counsel Mr. Smith, addressed to his partner in this city, from which it appears that he is unavoidably detained at Fonda, Montgomery county, in the trial of an important criminal cause, in association with the district attorney of that county. I am aware that he desired to submit some observations to the Senate, in reference to the closing argument of the counsel for the prosecution, and I would therefore prefer, and I have no doubt he would prefer, that the further argument of this case be postponed until his return. The engagement which now detains him was

entered into, I believe, when he was of the impression that the trial of this case would be resumed on Tuesday, and before he was aware of its adjournment until Thursday. I make this statement because I deem it due to my client, I myself not having had charge of the branch of the case, to which my associate proposed to direct his remarks:

MR. SEDGWICK: I am not disposed to proceed unwarrantably in this case, but I must be permitted to state that if we adjourn now, an indefinite delay will be likely to result. The Onondaga circuit where I reside, commences on Monday next, and will last two weeks, and it would be extremely inconvenient for me to leave there during that time. I should very much prefer, therefore, to finish to-day what little I have to say in respect to the facts of the case; and then if the Senate should be disposed to hear a reply, it can be made at some future time, without my being present. I should not care to attend, to hear what can be permitted to be said strictly in reply to what I have said or what I have to say; indeed, the order of the hearing was so arranged, that no reply would be permitted, unless intended to correct some misstatement of fact. I assume that when I shall have finished my argument, the Senate will hardly be willing to listen to an *argument* on the other side. Still, I will of course, submit cheerfully to whatever order the Senate may make in the matter.

MR. WILLIAMS: I move that the further consideration of this question be postponed until—I was going to say, Tuesday next, but it may be that an adjournment to that day would interfere with the arrangements of the counsel on the part of the people.

MR. SEDGWICK: I have very little more to say, and I should prefer to say it now, leaving it to the Senate to make such order as they choose in reference to hearing a reply afterwards. It would be very inconvenient to me to be compelled to return here again on account of an adjournment of this hearing.

MR. SHAFER: I think that the suggestion of the counsel is entirely satisfactory to us, if its adoption will enable Mr. Smith, with the assent of the Senate, to correct any misstatements that may have been made in the course of the counsel's argument. Taking that view of the matter, and, inasmuch as we have reporters here who will, of course, take down accurately everything that he says, I do not know that we desire a postponment of this hearing.

MR. WILLIAMS: If I was understood as making a motion, I withdraw it.

THE PRESIDENT: The counsel for the people will proceed with the conclusion of his argument.

MR. SEDGWICK then resumed his argument for the prosecution, as follows:

MR. PRESIDENT: I had proceeded in the consideration of this case, to discuss the power of the Senate over it, and the various charges preferred against the respondent, up to the sixth charge, as it stands upon the record, and I had discussed some points in relation to that charge, and presented some considerations in connection with it; but in order that the chain of argument relating to that charge may be presented to the Senate unbroken, I will now recapitulate very briefly, the points in respect to it, that I had made at the time of our last adjournment. That is a charge—a recital, rather—of a connection, as we claim, an improper, unlawful, guilty and corrupt connection, between the judge of Oneida county and the Deputy Provost Marshal of the district, and also a like connection of that judge with Aaron Richardson, a bounty broker, engaged in the recruiting business in the city of Utica. And with the view of getting clearly at the connection between these parties in the proper order, I had observed, in the first place, that the county judge did not enter into that business hastily, that whatever connection he had with these parties was deliberate, intentional, and formed with his eyes open, and with a full and perfect knowledge on his part of the character of the men with whom he was dealing, and of the business in which he was engaging; that he, upon his own statement and showing, knew what Aaron Richardson desired, and what his business was, knew that he was a notorious bounty broker, and that he desired facilities, as he, Smith, expressed it in his testimony, "clear to the verge of the law and beyond;" that he had known the character, and business and designs of Richardson for a considerable time; that he made this arrangement with him with the expectation of pay, not in proportion to the ordinary payment which an attorney would receive for occasional advice and assistance to a client, but that he expected "liberal compensation," as he terms it, by which it appears he meant two thousand dollars; for in an attempt between him and Collins to fix it, Collins suggested $1,000, but he, jokingly, as he says, claimed $2,000, for services rendered to Richardson that

winter. With this knowledge and full understanding on the part of the judge, of the business in which he was engaging, I proceeded to detail the facts, taking them from the body of the testimony, and arranging them so as to bring the events in chronological order, and I endeavored to show what was done in that business by the Judge for the advantage of this bounty broker, and for securing to him those special facilities and advantages over other persons engaged in the same business, which he demanded and received. The first step that the Judge took in relation to it, was the journey to Elmira on the 9th of January. You will observe by the tenor of the testimony (which I assume that Senators have read, or will read), that when Smith started for Elmira to see Haddock, Richardson started also—followed him on the next day—as every one will see plainly, with the object of seeing these persons Haddock and Smith together. They were strangers to him, but he had been brought into communion with Smith by Collins, the man who was the clerk of Richardson, and who occupied a place in Smith's office, upon the understanding on the part of Richardson that Smith had such friendly connections with Haddock, that he could procure for him, Richardson, special facilities in his business; so he went down to see them together. Now, when a man like Aaron Richardson speaks of "special facilities" in the business he was following, the business of a bounty broker, he means, of course and necessarily, corrupt facilities, some arrangement that will favor him beyond others engaged in the same business; something that will enable him to deal with the officers at the recruiting station in a peculiar and exceptional manner, and more to his advantage than the ordinary way would be. With this understanding, then, they went to Elmira, and the orders that Richardson desired were obtained. He was allowed to have his clerk outside of the marshal's office to prepare the papers for the recruits, and he was allowed to contract with the recruits to go for three-eighths of the bounty; the regulations of the office having previously required that five-eighths of it should go forward to the general rendezvous with the recruit; and very soon afterwards, owing, as I say, and as every one must see, to Judge Smith's recommendation and acquaintance, and to his prosecuting the acquaintance with Haddock by corrupt means,—very soon afterwards he was able to obtain an order from Haddock to the provost marshal of that district, at Utica, by which he could have a recruit go for-

ward for $50 if he agreed to, or "from patriotic motives" if he chose to, as Haddock suggested in his letter; so that if honest recruits were put in under the arrangement, they would go forward merely from patriotism and without any pecuniary inducement or reward, while such thieves and blood-suckers as Richardson and his coadjutors would take to themselves the bounty which the county in its liberality had offered to recruits. The result, of course, was the enlistment of no honest regular recruits. That could not have been done under such an arrangement, and it was not intended. It did not require the smartness and intelligence of the Judge of Oneida county to see what every ordinarily intelligent man must necessarily see, that the system was that of enlisting bounty-jumpers, men who would enlist and, for a pittance of $50, or $100, would take the risks of desertion, men who would enlist with the purpose of deserting and without any intention to serve in the army at all. That was the first step. Then there was an effort to secure a contract by which Richardson was to fill the quota of Oneida county, and he secured from Haddock telegrams, and a paper, showing the credits to which the county was entitled upon its announced quota, showing what deductions the county was entitled to; he procured those telegrams conveying false intelligence, stating the quota of the county at twice its actual amount, with the view and for the purpose, as the evidence shows most clearly, of enabling him to make a wholesale contract with the supervisors of the county; in which Judge Smith aided him by speaking to the supervisors, and probably in other ways also; and if he had succeeded in that purpose—in carrying out that contract which the Judge desired and helped him to make, he would have made by that alone, the sum of $240,000! Immediately upon getting in with this man, Judge Smith leaves his business as county judge, and goes off himself, to Jefferson county, and telegraphs back to Richardson, endeavoring to engage in the same business of bounty brokerage himself. Beside that, in pursuance of this scheme arranged between these men, in which Judge Smith was a guilty participant, on the 6th of February Haddock informed Richardson—upon receiving from him $2,000, which Collins took to him and for which he gave that receipt, which, as everybody knows and sees, is a miserable cover for an open bribe, not returning the money, but depositing it in his bank, and sending back that paper, which was intended for no other purpose than con-

cealment and to make testimony, if he should be discovered in his rascality—after this, I say, Haddock sent back that letter directing the marshal of the county of Oneida to allow each recruit to make his own bargain, and he sent back in his own hand, sealed, an unsigned letter to Richardson, giving him private information in regard to the quota and the credits that would be required under a certain allowance of 25 per cent. upon the quota of the county, which would not be called for, and advising him, if he could, to make contracts with the towns before they obtained knowledge of the true condition of affairs, and telling him that he could make money in that way. These papers were put into the hands of Richardson, for his profit, by the marshal. He was allowed a guard. I went over this part of the case more fully before, and I need not stop to detail it now; but so the history of the case goes on, step by step, from the first interview between Haddock, Richardson and Smith, up to the time when the provost marshal found that it would probably be necessary to quarrel with Richardson, and telegraphed, with perfect truth and propriety, that there was a scheme of bounty-brokerage which had its centre at Utica, in which officials, and the very highest officials, were engaged, and by which none but thieves and bounty-jumpers were enlisted at that office. So matters went on until the 3d of March, when an event occurred which must remove all doubt, if any can have existed in the mind of any rational man, of Smith's complicity in these schemes. On that day, the 3d of March, he went to Elmira, and was there informed by Haddock of the existing relations between him and Richardson; he there understood and was advised that Haddock had suffered himself to be bribed by a bounty-broker, and that in consideration of bribes received from him, he had betrayed his duty and had given this bounty-broker, Richardson, advice and knowledge of facts that would enable him to plunder the public, and upon that occasion Haddock told Smith, that the papers and telegrams which Richardson had received from him and had in his possession, were of such a character as to implicate him in Richardson's schemes. It became necessary, therefore, for him to get them back in order that he might suppress the evidence of his connection with Richardson; and then it was that that telegram which has been read here upon the other side —that telegram to Fry—was got up, stating that there was a scheme of bounty-brokerage going on there, and asking him to send Baker, the notorious detective of the War Department—to send L. C.

Baker, not to Utica to find out what irregularities and frauds were being committed there, but to him at Elmira, that he might give the detective instructions. The frauds were at Utica: why send Baker to Elmira? Do you suppose that Haddock and Smith were really trying to discover frauds, that they might put a stop to them and punish the perpetrators; that they were seeking to detect and unravel the conspiracy by which the public were being plundered. They already knew all about those frauds. They could at any moment lay their hands on the men who were engaged in plundering the public. No, they did not desire to see the plunderers discovered and punished; but they wanted L. C. Baker, a pliant tool of whoever chose to employ him, they wanted him put into the hands of Haddock at Elmira, that he might use him, possibly for the ruin of Richardson, whom he would have sacrificed without scruple, but quite as much for the protection of himself and Smith, who had put their hands into this villanous business. And there they contrived their scheme to get the papers out of the hands of Richardson. They proposed the plan of frightening him into a surrender; and, fearing that that might not succeed, they arranged also to try and bribe him—they went at him with the sword in one hand and seduction in the other. Hoard went from Elmira to Rochester on that occasion, with Smith, for the purpose of meeting Richardson, who had appointed a meeting there with Haddock, beyond the bounds of his district, not on the road from Elmira to Utica, but off the track altogether, where suspicious persons would not be likely to have their eyes upon them. But Haddock's courage failed him; he was unwilling himself to meet Richardson, who, he knew, had in his hands the evidences of his corruption; so he sent this instrument, Smith and Hoard, to negotiate for him with Richardson in this dirty business. They went; and what did they take with them to aid in the negotiation? An order to Crandall at Utica was put into the hands of Hoard, to surrender $20,000 in bonds of the county of Oneida, which Richardson had been compelled by the honest officers at Utica to place in their hands, as security against the desertion of his men. And Smith and Hoard went there to offer to Richardson a surrender of those bonds, for the purpose of getting from him those papers. Smith went there as the tool of Haddock in that business, and at the same time, as the counsel of Richardson, to advise him as his counsel and seeming friend that it was best for him to give up the evidences in his possession of Haddock's guilt. I am not going to stop to detail that scene at Rochester,

the negotiations between these parties, or to speak fully of the letter that was there written—the letter which Smith admits he read, but of which he is unable to remember one single word. You have seen him here prompting his counsel with ready reference to the evidence and the law, a man quick, bright and intelligent, and knowing this case fully from alpha to omega, yet he forgets utterly the contents of that most important letter in the negotiations between these parties, and throws himself back upon the *non mi recordo* of an embarrassed and unwilling witness. But he came home and arranged for a new meeting. A telegram was sent from Rome, signed "R. & S.," as you may remember, appointing another meeting; they telegraphed to Haddock that they had agreed to go there on the 10th of March; it was sent to Rome for secrecy, and an answer was required to be sent over the same line to Rome. The climate in that neighborhood was getting warm about this time, and the evidences and signs of suspicion that reached Haddock, Richardson and Smith, made them become more secret in their operations; the correspondence between Smith and Haddock had been burned, and secrecy was resorted to in their further intercourse. But they brought about this second meeting at Rochester. It was arranged for the 10th of March, and it took place on the evening of that day—Friday. If you read the evidence carefully you will see how busy Judge Smith was during those days. He returned from the first meeting at Rochester on the 6th. He swears that on the 6th, the very day on which he returned from Rochester, he went to Elmira to see Haddock. He came back and telegraphed him, arranging this meeting. He saw him again on the 13th. And after this second interview, when, as will be seen by the evidence in the case, it had been arranged that Haddock was to be bribed with $5,000, which Judge Smith carried to him, and with the delivery of papers, telegrams and letters that implicated and would convict him, and when, previous to the surrender of those papers, he was to be bribed to grant a series of four or five orders for the benefit of Richardson, by which he would be enabled to still further plunder the public, we find that Judge Smith was busy every day in the negotiation of that business. On the 6th, he says, he went there. On the 9th he was at Rome, because on that day he telegraphed, and there is among those papers a telegram dated on the 9th of March, from him to Haddock, from Utica. Now what was arranged at that second meeting at Rochester, if it was

not just what I have stated, that Richardson was to send the $5,000 and the papers by Smith to Haddock, and was to have in return orders, as in Collins' memorandum? When did Smith get the $5,000? He went back from that meeting at Rochester; he says he did not hear anything about $5,000 up there, but the moment that Smith and Richardson get home to Utica the $5,000 is talked about, and Smith calls upon Richardson for the money and the papers, and the money is finally paid over to him; and on the 13th he telegraphs again to Haddock that everything is right, that he has the *documents*, meaning the *money*, for he got no papers, and adds something that has now gone out of my mind. See, then, what position this man stands in here. It is in proof before the Senate that on the 3d of March he and Haddock had come to the conclusion to be honest men, and to get out of the hands of Richardson, whom they were to treat thereafter as a public enemy, entitled to no quarter, not even entitled to retain the confidence of the man who had acted as his attorney and counsel, but to be treated, I say, as a public enemy, an outlawed person. And what did they then do? Previous to this time, you will remember, a telegram had been sent to Captain Scott, the marshal at Oswego, warning him against Aaron Richardson, who would attempt to muster men in his district. That telegram was right; the cause of public justice required, I suppose, that it should be sent; yet four or five days after that, these same men who were seeking to secure the public against the imposition of Richardson, sent a telegram or an order to Utica, to allow men to be mustered for this Oswego district, or any other district in the State, at Utica, so as to give Richardson the same advantages that he would have had if he had been permitted to muster his men at Oswego; giving him in this way all the advantages that he could possibly have been deprived of by the telegram to Captain Scott. Well, that money was obtained. The precise day when Smith got up to Elmira with it does not appear, but it was some time about when that flood came on.

MR. SHAFER: The 16th.

MR. SEDGWICK: The 16th or 17th. He took the $5,000 and carried it to Haddock and exhibited it to him; and what did Haddock say? "We agreed a fortnight ago, on the 3d of March, that we would have nothing more to do with this scoundrel Richardson." Did he say that? Oh, no. When he saw the money he shook his head and said that he had made up his mind *then* not to have

anything more to do with Richardson. Up to that time he had granted orders in his favor—he had granted more than a single order—all those that were on Collins' memorandum; but there were two things that operated with special force on the conscience of Haddock that day; one was that Major Ludington and some other detectives had been sent to Utica. Baker had not been sent to Elmira to receive orders from Haddock, and to put the investigation into his hands; but the War Department had sent Ludington to Utica, and he had discovered these frauds and iniquities, and had put Richardson under arrest; and beside that, those 7.30 notes were numbered, so that they could be traced, if Haddock put them into his pocket, and, therefore, he shook his head and said he would have nothing more to do with the matter. I have no doubt he shook his head on that occasion with great reluctance. He did not like to see $5,000 pass in that way from under his fingers; no public plunderer ever did. But he was frightened by the fact that Richardson had been arrested, and not arrested by him,—because when arrested, Richardson applied to Judge Smith to know if his arrest had been made by Haddock's order. Smith telegraphed to Haddock asking the same question, and Haddock replied, no; and they did not know who had ordered the arrest of Richardson. You perceive now, that at this stage of the proceedings the necessity for getting those papers had very much increased. Richardson was under arrest, and there had been rumors, so the evidence states, that he was to disclose to the officers what he knew of these transactions. There had been a special Judge-Advocate appointed—they say he is the counsel of Richardson—they say we are the counsel of Richardson;—Richardson wanted to know if Haddock had ordered his arrest, and Haddock denied it. Now, of all these guilty men, Richardson had the advantage in position. Although he was under arrest, yet he was not a public officer who could be tried by court-martial for plundering the public under the guise of patriotism, and under the cover of official position and power. He was amenable to the civil law, if he had caused recruits to desert, or had enlisted men with the view of having them desert; but he was not answerable for his conduct to a court-martial, and Haddock was. Richardson knew his position and his advantages; what next? Haddock wanted to see Smith again, and Smith wanted to see Haddock, and they arranged a meeting at Canandaigua and had that meeting, and there Haddock unburthened himself further, in regard to those papers and the

necessity of obtaining them. As I have already said, these men began to feel that they were in danger. Richardson was under arrest, and it had been suggested to Haddock that he would betray what had passed between them; and one rascal, like Haddock, always knows that he is in danger of being betrayed by another rascal like Richardson. Haddock and Smith had the interview, and then it was that the fruitful brain of Judge Smith suggested that they could dispose of Richardson in another way; that is, Crandall having refused to give up the $20,000 in bonds, that he could obtain them by a suit, and an action was advised. Now, won't you bear with me a moment while I refer to the letter of Judge Smith upon that subject. He went back from that interview, saw Richardson on the 4th of April, and wrote this letter to his friend Haddock, which will be found on page 275 of the printed case:

"UTICA, *April 4th*, 1865.

"MY DEAR HADDOCK:—I enclose herewith Crandall's explicit statement in regard to the money left with him for Doyle, Ryan, Thompson and Cavanaugh.

"Being made by him in relation to his official acts, I did not ask him to verify it by oath, but it is undoubtedly the statement he would make under oath, and will justify all concerned in acting upon it.

"I hope to get from headquarters a favorable consideration of this matter, as I take a personal interest in it. McIntosh would have notified Crandall not to pay over this money had I not advised him not to object, and said to him that he would not be prejudiced by it."

I read this first part merely to show that Smith was not merely the attorney of Richardson, but that any bounty broker who wanted advice or assistance, or who desired something irregular from Provost Marshal General Haddock, went straight to Smith, because it was understood and notorious that he was *the* man of influence with Haddock, that he was the great go-between in transactions between any theiving bounty-broker and the provost marshal of the district. But let me read the remainder:

"P. S. Since writing *via* another, I have seen the person alluded to in that letter, and he denies having dispossessed himself, as rumor declared, and says matters are in *statu quo*. Crandall, he says, has secreted the bonds, so that the sheriff cannot get access to them. I think the pressure that Hunt is bringing upon him in this matter is for the purpose of coercing him into an alliance against you. If this should be the fact, it would be suggestive. Would it not be well to relieve him from the other quarter?

"He asserts that he has done nothing, and contemplates nothing in any way hostile to you. Of course this has no weight, except in disclosing the attitude which he wishes me *to suppose* he occupies. You will judge for yourself as to the probable truth.

"He also says that he received a letter from you to-day, of about the 27th, which accounts, he says, for his not attending to the matter referred to in it. As ever, truly yours,

"GEO. W. SMITH.

"Major JNO. A. HADDOCK, Elmira."

That is, Haddock, after his interview at Canandaigua, after all this pretense of treating Richardson as a public enemy, continues his correspondence with him up to the 27th. Now, in this letter Smith says: "I have seen the person alluded to in that letter" (meaning Richardson, as explained afterwards); and then further on he suggests: "Would it not be well to relieve him from the other quarter?" What did that mean? He explains it himself in his testimony on the next page (277), where he says:

"My idea was this, that Mr. Hunt was defending the suit for those bonds vexatiously, or while, in my opinion, Richardson was entitled to them by law, there was a vexatious delay made by the suit. And what I suggested here was, that it would be better for Haddock to make an order to give up the bonds and relieve Richardson in that way, and in that way prevent his hostility against him."

When this matter about the bonds had got into court, and when, on the part of the people, Mr. Hunt, now of the court of appeals, was trying to defend their rights against the claims of Richardson, Smith suggested to Haddock, for the purpose, as he distinctly states in his testimony, of preventing Richardson's hostility, that he (Haddock) should make a positive order to his inferior officer for the surrender of the bonds.

MR. SHAFER: I would like to inquire of the counsel, if the supreme court general term in his district has not decided that Richardson is entitled to those bonds.

MR. SEDGWICK: I don't know whether tney have or not, and I don't care.

MR. SHAFER: I aver that they have.

MR. SEDGWICK: I know nothing in this case that is not in the papers or solemnly sworn to in the testimony. It is for the counsel on the other side to make suggestions, and to bring in matters that are not in evidence and have nothing to do with the case.

MR. SHAFER: Is it in the case that Mr. Hunt is now of the court of appeals?

MR. SEDGWICK: I think it is so stated, that the Mr. Hunt referred to is the same man who is now a judge in the court of appeals.

MR. SHAFER: Is that solemnly sworn to?

MR. SEDGWICK: I prefer to pursue my argument in my own way. We have reached now, about the close of this chapter. Haddock was court-martialed, and Judge Smith appeared upon the trial as his advocate and witness. The result of that trial is matter of history. I need not state it here. Now what I claim here is this: that from the outset, from the very beginning of this business at Utica, Smith was engaged in it; that he was engaged in it upon this general idea of a "liberal compensation," a compensation liberal enough to pay him for services which were corrupt, which it was unbecoming and improper for a judge to perform, and the performance of which unfitted him for the fair and upright discharge of his official duties; that he was meddling, and was "art and part" in a business intended to plunder the public, to cheat the army of the nation of its soldiers, and the treasury of its money; that he was assisting a man whom he knew to be notoriously engaged in that business, and that even that man he betrayed when it became necessary to do so, for the defense of the "friend of his youth," to try to suppress the evidence against him and to stand between him and merited punishment; that he was active in this business not only for Richardson, but also for others who were engaged in the same pursuit, and that he endeavored to engage in it himself; and that wherever there was occasion to call upon a man for counsel, in regard to matters that were injurious to the public interests and welfare, he was the man. He was consulted about the town bonds; he offered his assistance in regard to recruiting in Jefferson and Lewis; he tried to change the Verona credits; he was employed in respect to the Redfield recruits; this business and everything connected with it, from the beginning to the end, was one great system of corruption, rotten to the core; and, from the outset, Smith was engaged in it, and engaged in it knowingly, willfully, and with his eyes wide open. The time which his salary and his office should have compelled him, as an honorable man, to devote to the public interests, he spent in this base business of bounty-brokerage and in defending the men who were engaged in it and those among the officers of

the State who they had bribed to abet it and take part in it, defending and encouraging them from the beginning to the end. I may be mistaken in the belief that a man who is capable of all this is unfit to sit as an arbiter upon the rights of citizens, that he is an unsafe judge—I may be mistaken in that belief, but I think it is one which I hold in common with the great mass of the people of the country; I still think there is a general sense of public propriety and decency, a regard for the due administration of the law, a sense of what is becoming and proper in a man who presides in a judicial tribunal, that will be shocked by the contemplation of transactions of this character taken part in by a judicial officer, and that will insist upon the punishment of the offender, whoever he may be. The seventh charge is a charge of a specific offence, growing out of the facts proved under the charge that I have just been discussing. It is:

"That the said George W. Smith did, while holding said office at Utica, in the said county, on or about the 16th day of March, 1865, receive from one Aaron Richardson, a person then engaged in the business of bounty broker, the sum of $5,000, in 7–30 government notes, upon the understanding and for the purpose of offering the same to the said Jno. A. Haddock, then Acting Assistant Provost Marshal General of the Western Division of New York, as a bribe for favors granted or to be granted to said Richardson, and did knowingly and corruptly bear and offer the said bribe to the said Haddock for the purpose aforesaid."

It was found necessary by the general government, early in the war, to pass additional laws against bribery of public officers, because it was found in the course of the war, and of the immense expenditures to which it gave rise, that favors were granted improperly by public officers in almost all departments of the government. There was already a statute, as we have in our own State, against the bribery of judicial or legislative officers, but no general statute against bribery; so it was made, by the statute, which I have cited in the brief (1 Brightley's Digest, 214, § 71), a high crime and misdemeanor, punishable by imprisonment in the penitentiary for three years, and a fine of three times the amount offered as a bribe, to offer a bribe to any officer of the United States, or to any person holding any place of trust or profit, or discharging any official function in, or in connection with, any department of the government. And I say here, that within the very letter and spirit and terms of that statute, Judge

Smith is guilty of that high crime and misdemeanor. He took that $5,000, knowing that the party from whom it came intended it as a bribe, and knowing that in connection with the surrender of those papers, it would be a sufficient bribe, he took that money and carried it to Elmira, and offered it to Haddock; and I say again, that by so doing he made himself guilty, under that statute, of the crime that is thereby made punishable. Remember that there is no dispute about these facts. He testifies to them himself; he swears that he took this money to Elmira and exhibited it to Haddock, and that Haddock shook his head and said that he had made up his mind not to have anything more to do with Richardson. That act of Judge Smith's is distinctly a high crime and misdemeanor, for which he might be impeached, and for which he certainly should be subjected to the milder corrective of removal from office; because, when you find a man who will engage as an instrument in bribery, who will take any part in such transactions as these, you find a purchasable man, no matter what his position may be, be he judge or legislator, you find a man who has himself "an itching and an open palm," who will take a bribe as quick as he will offer one. Such a man I say again, is unfit to administer the laws of the State, or to act in any judicial capacity whatever. The 8th charge is that he attempted to suppress letters, papers and telegrams; that he tried to procure them from Richardson with the view of suppressing them; papers sent to Richardson by a public officer, and which Judge Smith knew implicated that officer in crimes against the Government. That is an offense, a misconduct, not the breach of any particular statute, yet it is an offense as rank and as deserving of censure and punishment as the one of which I have just spoken, the offering of a bribe. And although Richardson was not a public officer, so that the offense was of a somewhat different character in his case, it is a fact that in attempting to procure those telegrams and other papers from him, Smith offered him a bribe, to wit: the facilities that were required in his scheme of further public robbery and plunder. If acts like these do not constitute such misconduct as disqualifies a man from holding a judicial position, then I have much mistaken the proper qualifications of a judge. If you will trace this business from the 9th of January, when it began; trace Smith from the day when he started from Elmira on that occasion, through that winter and the succeeding spring, down to the trial of Haddock, you will see that he was engaged during that period in

business inconsistent with the honest and fair discharge of his duties as a judge, and that he could not have given to those duties the time necessary for their proper discharge. It is true that he held the public terms of his court; but everybody acquainted with the business of a county judge knows that that is a very small part of it, that he has to be at his office to hear insolvent cases, and to grant orders, &c., that it is inconsistent with the right discharge of his judicial duties, that he should be traveling between distant towns, and going about the country engaged in a disgraceful and scandalous business, leaving unperformed his regular duties, for the discharge of which he pockets a salary, and attending to them only at such chance opportunities as this other business gives him. As I have said before, the people of the State, or the people of Oneida county who are here demanding that this Judge shall be disrobed, do not desire any victim; but they do demand an example, they do demand a warning, they do demand that this man shall be so dealt with that his case will stand before the officials of that county and of the State for all time to come; warning them that when a man accepts official position, and above all, a judicial station, he is bound by some obligations of morality, integrity and decency in the discharge of his duties. When the transactions I have detailed were made public in Oneida county, when it came to be understood that Smith, all through that winter and the succeeding spring, was spending his time, first in the employment of a bounty broker, who robbed the county of untold thousands, and then was engaged with equal zeal in defending a public plunderer who had used his official position to give extra facilities for the robbery, they saw that it was a case that demanded investigation, and they felt that they could not rest assured of the proper discharge of the duties of their chief judicial magistrate, while these transactions were left without investigation. So they have come here and made these charges before this tribunal, where this Judge has a full opportunity of defending himself against the rumors, imputations and direct charges that have for some time been rife in that community. If he has been unjustly assailed, he has had ample opportunity for defence; and certainly this investigation could not have been avoided; because it would not do for him nor for the community in which he lived, to suffer the continued administration of justice at his hands, while he was resting under this cloud. The people of that community understood and knew, as we all know, that if a judge can be the

bearer of bribes, if his palm can be soiled by the reception of a bribe which he carries to another, he is himself a man who would take a bribe; and they knew and felt that if their judge was the companion of bounty-brokers and thieves, if he was the accomplice and friend of public plunderers, if he was guilty of extortion, if he sold the places that were in his gift, or that his influence could command, he was an unworthy minister of justice, he was such a judge as those who in all times and places have given sting and point to the satire of the poet who said that justice could be sold.

> "Plate sin in gold, and the strong lance of justice hurtless breaks.
> Clothe it in rags: a pigmy's straw will pierce it."

It is just such judges as are here indicated that in all times and places have disgraced the judicial office. This judge has been fairly tried. He stands before the Senate upon his own testimony in his own case. Not a witness has spoken against him, save himself. He has had ample opportunity here (even if, as his counsel complains, he has never had before) for explanation. He has piled explanation upon explanation. He has, with artful sophistry, disguised the points in his conduct that were most open to attack, he has glossed them over he has varnished them. Wherever he could, by want of recollection or otherwise, he has diminished the magnitude and the number of his offenses. If he is innocent, this investigation has given him the opportunity to wipe away the stains on his official reputation and to re-instate himself in the confidence and good opinion of the community. But if guilty—if, with all these advantages on his side, you find that he is guilty, then I say again that public decency and public justice demand that he should be made an example; and if disgrace and punishment therefore overtake him, they are but the natural consequence, the inevitable result, of corrupt and guilty courses. Within our memory, sir, a high-chancellor of England has been compelled, by the force of a just public sentiment, which, in all well-governed communities, requires that the springs of justice shall be kept pure, to resign the seals of office, because some relative in whom he had reposed trust had sold the places within his gift. There is also the case of Lord Macclesfield, more than 100 years ago. Lord Macclesfield, the purity of whose personal character and the uprightness of whose administration of his public office were never disputed, had suffered his secretary to receive, in the bestowal of the office of a master in chancery (an office within his appointment and gift), a larger present than it had been the custom to pay to his prede-

cessors. There had grown up a custom in the disposal of these offices for the person receiving a valuable office to give some present to the secretary of the judge from whom he received the office; yet, in this case, because Lord Macclesfield had suffered his secretary to demand a larger present than it had been customary to give, and which, therefore, might, in a certain sense, seem to be an enforced present, from the persons receiving those offices, he was impeached, deposed, and deprived of the great trust that had been confided to him; because, "contrary to the duty of his office and against the good and wholesome statutes of the realm," he had suffered this innovation upon the established practice. He was punished with the loss of his office, and a fine of £30,000, and a commitment to the Tower. And no student of history can have forgotten the example of that great man, whose efforts for the advancement of human learning mark a new era in the progress of the world, who gave to the human mind an impulse such as it never had received before, which it feels to this time, and to which we are so deeply indebted for the great advancement of the present age, in useful knowledge and sound learning—no student of history can have forgotton that even such a man, the great Lord Bacon, was fined £40,000 and committed to the Tower, because he had yielded to the weakness of human nature and attempted to sell the justice which he had been appointed Lord Chancellor to distribute with an equal and upright hand to rich and poor alike. We are not without examples, then, of judges in other times, and in our own times, who have been deposed from office because they have failed to administer the laws with equal and exact measure to all classes in the community. But the counsel for the accused says that this man has been repeatedly honored with the public confidence and support; and as an additional defense and excuse, he has brought into the case the wife of the accused, and his poverty, and the orphan children of his brother. It may be unwise, it may be dangerous, to attack a man armed in this manner—on the one side his wife, on the other, these orphan children, in front, his repeated election to public office by the people of Oneida, and his poverty in the rear—a man with such a panoply of defense may be a dangerous man to attack; but I repeat, that abused public confidence, that abused laws, that violated pledges of integrity in the discharge of his official duties, all demand that this man who has been so often and so much honored with the public confidence, should be made

to see and feel that when he abuses that confidence there is a power that can reach him and pluck him down from the position he has disgraced, that public justice may be indicated, that the integrity of the laws may be saved, and that the purity of their administration may be preserved, for the benefit of the community and of the State. If this judge is such a man as I have described, if he has abused his trust, abused the confidence which the people have repeatedly reposed in him, then his case affords this Senate an opportunity such as has never been afforded before in the whole constitutional history of the State in which we live, of showing that the rights of the people and the just administration of the laws will be protected, at the sacrifice, if necessary, of any individual, however high or honored he may have been; and that, however creditable the past of such a man may be, or however bright his prospects, when he attempts to tread the paths of corruption, dishonesty and injustice, he shall find that there is a power in the people and in the Constitution and laws of the State, to reach him and stop him in his guilty career.

At the conclusion of Mr. SEDGWICK's address,

Mr. CROWLEY moved that this case be made a special order for to-morrow (Friday) immediately after the reading of the journal.

Which was carried.

The Senate then adjourned till Friday, at 11 o'clock A. M.

FOURTEENTH DAY.

ALBANY, *January* 18*th*, 1867.

The Senate met pursuant to adjournment, when the proceedings were resumed as follows:

Mr. CROWLEY offered the following resolution:

Resolved, That the findings and decision in the matter of the removal of George W. Smith, county judge of Oneida county, be made the special order for Thursday, January 24th, immediately after the reading of the journal on that day.

Which was carried.

FIFTEENTH DAY.

ALBANY, *January 24th*, 1866.

The Senate met pursuant to adjournment, and upon going into secret session, the proceedings were resumed as follows:

In pursuance of the seventh rule, the clerk read the first charge against the respondent, as follows:

"That the said George W. Smith being such judge as aforesaid, and being authorized by the laws of the State of New York to decide upon the claims of citizens of said county to exemption from service in the militia of said State, did, in numerous instances, draw up as attorney or counsel for the applicants for such exemption the necessary papers to secure such exemption, and did receive pay therefor, as such attorney and counsel, knowing that the several cases so prepared were to come before him for examination or decision thereon, and afterwards passing upon and deciding the same in his judicial capacity. This was done at different times and dates during the years 1862, 1863 and 1864, at the city of Utica, in said county of Oneida, the precise dates and names being unknown."

The PRESIDENT then put the question to each Senator: "How say you, is the first charge preferred against the accused proven?"

To which each Senator arose in his place and responded, with the following result:

Proven.—Messrs. Andrews, Barnett, Bennett, Campbell, Collins, C. G. Cornell, E. Cornell, Crowley, Folger, Gibson, Godard, Kline, La Bau, Lent, T. Murphy, O'Donnell, Sessions, White, Wilbor, Wolcott, 20.

Not proven.—Messrs. Humphrey, H. C. Murphy, Stanford, Sutherland, Williams, 5.

The clerk then read the second charge, as follows:

"That the said George W. Smith, being such judge as aforesaid, and having one Henry T. Utley as a law partner, he, the said Smith, being authorized by the laws of the State of New York to decide upon the claims of citizens of the said county of Oneida to exemption from service in the militia of said State, did suffer and permit the said Utley, as attorney and counsel for applicants for such exemption, to prepare the papers therefor, and to receive

pay therefor, as such attorney and counsel, he being entitled to and receiving, as a partner of the said Utley, a share of such fees and charges, and knowing that the several cases so prepared by the said Utley were to come before him for examination and decision thereon, and afterwards passing upon and deciding the same in his official capacity.

This done at Utica aforesaid, at different dates during the years 1862, 1863, 1864 and 1865, the precise dates and names being unknown.

THE PRESIDENT then put the question to each senator "How say you, is the second charge preferred against the accused proven?"

To which each senator arose in his place and responded with the following result:

Proven: Messrs. Andrews, Barrett, Burnett, Campbell, Collins, C. G. Cornell, E. Cornell, Crowley, Folger, Gibson, Godard, Humphrey, Kline, LaBau, Lent, H. C. Murphy, T. Murphy, O'Donnell, Sissions, Stanford, Sutherland, White, Wilber, Williams and Walcott, 25.

The clerk then read the 3d charge as follows:

"That the said George W. Smith, being such county judge as aforesaid, and as such, under the laws of this State, having the controlling voice in the appointment of excise commissioners in the said county of Oneida, did, with a view to his own personal advantage and gain, procure the appointment of Aaron W. Reynolds, George F. Weaver and Samuel P. Lewis as such commissioners; and did afterwards, to wit, in or about the month of February, A. D. 1865, with the same intent, procure from the commissioners so appointed, his own appointment, in writing, as the prosecuting attorney of the said board of commissioners, the same being a valuable office and appointment; that one Samuel J. Barrows, at and before such appointment of said Smith, held the said office under the appointment of the said board, and had discharged the duties thereof in a satisfactory manner; that the appointment of the said Smith was not published, but was kept secret; that afterwards and on or about the 22d day of March, A. D. 1865, the said Smith sold the said office and appointment to the said Barrows for the sum of $500, which was paid by the said Barrows and received by the said Smith therefor, and such appointment in writing given up to said Barrows and destroyed; that at the time of the payment of said money as aforesaid, and as a part of the

same transaction, it was corruptly proposed and agreed by the said Smith that he would continue in office and reappoint one of the said commissioners, viz: the said Weaver, for the purpose of securing the said office to the said Barrows; that it was understood by and between the said parties, that by the sale and giving up of said office and appointment by the said Smith, the said Barrows would continue in said office and employment, and could secure his own reappointment thereto, which has been done, and said Barrows did continue in said office, and has hitherto and still does continue and has been reappointed thereto. And it was further understood that said Smith was not thereafter to interfere with said Barrows in said office, but was to aid in continuing him therein, and securing the same to him.

The President then put the question to each Senator: "How say you, is the third charge preferred against the accused proven?" To which each Senator arose in his place and responded, with the following result:

Proven.—Messrs. Barnett, Bennett, Campbell, E. Cornell, White and Wolcott, 6.

Not proven.—Messrs. Andrews, Collins, C. G. Cornell, Crowley, Folger, Gibson, Godard, Humphrey, Kline, La Bau, Lent, H. C. Murphy, T. Murphy, O'Donnell, Sessions, Stanford, Sutherland, Wilbor and Williams, 19.

The Clerk then proceeded to read the fourth charge, as follows:

"That the said George W. Smith, being such county judge, as aforesaid, and as such under the laws of this State, having the controling voice in the appointment of excise commissioners in the said county of Oneida, did, with a view to his own personal advantage and gain, procure the appointment of Aaron W. Reynolds, George T. Weaver and Samuel P. Lewis as such commissioners; and did, afterwards, to wit, in or about the month of February, A. D. 1865, with the same intent procure from the commissioners, so appointed, his own appointment, in writing, as the prosecuting attorney of the said board of commissioners, the same being a valuable office and appointment. That the said Smith, just prior to his said appointment, and with a view to his own gain and advantage, did propose to one James G. French, an attorney and counsellor-at-law, residing at Utica in said county, and to one William B. Taylor, as a friend of said French, that he would procure the said appointment for him, the said French, or would give him his influence as county judge in that behalf, provided

and on condition that the said French would go into partnership with the said Smith in that business, or the business pertaining to that office and appointment, and would accept for his services one-third of the emoluments or profits of the same, and give to the said county judge two-thirds of such profits and emoluments, which proposition was rejected by said French. And further, that after the said county judge had received the said office or appointment for himself, he made substantially the same proposition to the said Samuel J. Barrows, before the sale of said office to him as in the last preceding charge specified and set forth."

The PRESIDENT then put the question to each Senator: "How say you, is the fourth charge preferred against the accused proven?" To which each Senator arose in his place and responded, with the following result:

Proven.—Messrs. Barnett, Bennett, Campbell, E. Cornell, White and Wolcott, 6.

Not Proven.—Messrs. Andrews, Collins, C. G. Cornell, Crowley, Folger, Gibson, Godard, Humphrey, Kline, La Bau, Lent, H. C. Murphy, T. Murphy, Sessions, Stanford, Sutherland, Wilbor and Williams, 18.

The Clerk proceeded to read the fifth charge, as follows:

"That at and before the time of the transaction, hereinafter stated and charged, one Henry T. Utley was the law partner of the said George W. Smith. That, on or about the fifth day of January, A. D. 1865, one Charles E. Norton was confined in the county jail of Oneida county upon a charge of grand larceny. That the said Smith, being the friend of one Major John A. Haddock, then the Acting Assistant Provost Marshal General of the Western District of New York, and, having authority in the premises, applied to and used his influence with the said Haddock to procure, and did procure from him a special order that the said Norton should be mustered into the military service of the United States, and that the bounty to which said Norton would become entitled on such muster in said county of Oneida, being the sum of six hundred dollars or over, should be paid to and retained by the said Utley, the law partner of said Smith. That upon procuring said order, and upon the application of the said Utley, the said county judge let the said Norton to bail—the said Utley becoming his surety, and thereupon said Norton was mustered into the service of the United States, and his bounty, amounting to six hundred dollars, was paid to the said Utley. That it was

understood and agreed between the parties to this transaction that such bail bond was not to be enforced against said Utley; and that, in pursuance of such understanding, the said county judge retained the same in his own possession and control, and did not file the same in the clerk's office of said county, nor deliver the same to the district attorney of said county, as by law he was required."

The PRESIDENT then put the question to each Senator: "How say you, is the fifth charge against the accused proven?" When each Senator arose in his place and responded, as follows:

Proven.—Messrs. Andrews, Barnett, Bennett, Campbell, E. Cornell, Crowley, Folger, Gibson, Godard, Kline, La Bau, Lent, T. Murphy, O'Donnell, Sessions, Sutherland, White, Wilbor, Williams and Wolcott, 20.

Not Proven.—Messrs. Collins, C. G. Cornell, Humphrey, H. C. Murphy and Stanford, 5.

It was moved that the further consideration of the case be postponed until Friday, January 25th,

Which was carried.

On motion, the Senate adjourned.

SIXTEENTH DAY.

ALBANY, *January 25th*, 1867.

The Senate met pursuant to adjournment, and upon going into secret session the proceedings were resumed as follows:

The clerk proceeded to read the sixth charge, as follows:

"That some time prior to the month of January, A. D. 1865, one John A. Haddock had been appointed to, and then held the office of Acting Assistant Provost Marshal General of the Western Division of the State of New York, with the rank of Major, and having his headquarters established at Elmira. That the said Haddock had long been the friend of and intimate with the said George W. Smith, and advised him of his expected appointment, and after it was obtained had a long interview with him at Utica in reference thereto. That at the same time one Aaron Richardson was a notorious substitute and bounty broker. That one John D. Collins, residing at Utica, and having a desk in the office of the said county judge then and for a long time previous thereto, was employed by the said Richardson as his clerk, and to assist him in his aforesaid business. That with a view to the mutual and

personal pecuniary, but corrupt and unlawful gain and advantage of the said Haddock, Richardson and Smith, and for the purpose of securing peculiar and special facilities and unfair and unlawful advantages to the said Richardson in his said business in Oneida county and elsewhere in the said Western Division, a corrupt and unlawful arrangement and combination was entered into by and between the said George W. Smith and the said Richardson and the said Haddock, acting upon the solicitation and under the personal and official influence of said Smith, by which such peculiar and special facilities and improper and unlawful advantages were secured to said Richardson in his said business of recruiting and bounty brokerage. That among other things the said Smith did, on or about the 8th or 9th day of January, A. D. 1865, at the request and on the behalf of the said Richardson, go to Elmira aforesaid, and did procure from the said Haddock two several letters to Lieutenant Colonel D. W. C. Poole, then Acting Provost Marshal at Utica, in the words and figures following, viz:

HEADQUARTERS A. A. PROV. MARSHAL GEN. & SUPT. OF
VOL. RECRUITING SERVICE WEST. DIV. S. OF N. Y.,
ELMIRA, N. Y., *January* 9, 1865.

Lt. Colonel D. W. C. POOLE, *Acting Prov. Marshal, Utica, N. Y.:*

Colonel—I have the honor to inform you that I have acquaintance with J. D. Collins, of Utica, and know him to be a fine clerk. You, unless good reasons are apparent to the contrary, treat enlistment papers made out under his direction and in his office, during the hurry of recruiting, as though made out by one of your enlisting clerks—taking care, however, to see that such papers are made out in conformity to law and regulations.

Very respectfully, your ob't servant,
JNO. A. HADDOCK,
Maj. and A. A. P. M. G.

HEADQUARTERS A. A. PROV. MARSHAL GEN. & SUPT. OF
VOL. RECRUITING SERVICE WEST. DIV. S. OF N. Y.,
ELMIRA, N. Y., *January* 10, 1865.

Lt. Colonel POOLE, *Acting Provost Marshal, Utica, N. Y.:*

Colonel—The true construction of Order No. 23, Department of the East, dated March 25th, 1864, and promulgated from this office, with an intimation that the spirit of that order would govern me in passing upon cases arising in this Division, will be held by me to be that if recruits or substitutes are fully informed, by the Provost Marshal, of their rights as to local and government boun-

ties, they may thereafter assign to any person such portion of their local bounty as they may elect, not exceeding five-eights thereof. The Provost Marshal should take pains to inquire fully into bargains made with recruits and substitutes, and hold both parties to a strict performance of the agreements, not forgetting that recruiting agents have rights that should be respected as well as recruits or substitutes.

I am, Colonel, very respectfully,
Your obedient servant,

(Signed) JNO. A. HADDOCK,
Major and A. A. P. M. G. W. Div. of N. Y.

That in further pursuance of such scheme and arrangement said Richardson went himself to Elmira, starting on the same day with Smith and passed him on the way, reaching Elmira in advance of Smith and advising said Haddock that he was coming and the purpose of his visit. That Haddock on that occasion gave to Richardson several letters to various provost marshals in his division, commending him to their confidence. That afterwards, and in pursuance of such corrupt scheme and arrangement, the said Richardson, at Canandaigua, on or about the 21st day of January, A. D. 1865, presented to said Haddock a valuable horse, cutter, harness and robes of the value of $500 and upwards. That afterwards, and on or about the 25th day of the same month, he presented to said Haddock $2,000 in cash. That in further performance of said corrupt scheme, the said Haddock sent to the said Richardson at Utica advice by telegraph, as follows: On January 24th: "She will be there to-morrow; watch for her." On the same day: "It stands at 2,088." On January 25th: "She was sent to you yesterday. Has she come? Do you want another one for the others? I wrote you last night." That these telegrams were intended to advise said Richardson of the quota of the 21st congressional district, being said county of Oneida. That afterwards, and on the 30th day of January, A. D. 1865, the said Haddock gave to said Richardson a paper showing the surplus of the several sub-districts of said district, as shown by the report of quotas and credits to the 31st day of December, 1864. That at the same time the said Haddock gave to said Richardson a letter of that date to Captain Crandall, who had succeeded said Colonel Poole as provost marshal of said district. That said paper and said letter are in the words and figures following, viz:

"Surplus of sub-districts in the 21st congressional district, as shown by report of quotas and credits, dated December 31st, 1864:

Annsville	9
Augusta	1
Ava	3
Boonville	24
Bridgewater	9
Camden	2
Deerfield	4
Florence	2
Floyd	1
Kirkland	3
Lee	3
Marshall	5
New Hartford	2
Paris	2
Remsen	4
Rome	12
Steuben	1
Trenton	8
Utica, 1st ward	4
Utica, 3d ward	18
Utica, 4th ward	5
Utica, 5th ward	7
Utica, 6th ward	24
Utica, 7th ward	8
Vernon	1
Western	3
Westmoreland	1
Whitestown	20
	193
Oneida county at large	17
	210
Deficiency	4
	206

"ELMIRA, N. Y., *Jan.* 30, 1865.

Captain CRANDALL, *Provost Marshal*, Utica, N. Y.:

Captain—From my acquaintance with Mr. Aaron Richardson, of Albany, I am well convinced that he is a man of integrity, and that he will do as he agrees. Such men are very valuable in put-

ting in men, as his acquaintance is very extensive and his resources many. I hope you will grant him all reasonable indulgence. He is a man of property, and can back up his statements.

Very respectfully, your obedient servant,

(Signed) JOHN A. HADDOCK,

Major and A. A. P. M. G."

That at some time after the appointment of said Crandall as Provost Marshal at Utica, the said Richardson had deposited with him a large amount, to wit: twenty thousand dollars of the bonds of Oneida county as security either that the men enlisted by him would not desert, or that they should be credited to the said county or district; that these facts and others connected with the transactions between the said Haddock and the said Richardson, were communicated to and well known to the said Smith, who was, during this time, in correspondence with said Haddock, and in frequent personal communication with the said Richardson after his return from Elmira, and during the months of January and February, 1865; that afterwards, and on or about the 3d day of March, A. D. 1865, the said Smith again went to Elmira and saw Haddock, and became fully acquainted with all his transactions with the said Richardson, as hereinbefore set forth; that on that occasion he tried to procure from the said Haddock an order for the surrender of the said $20,000 of bonds so deposited as aforesaid by the said Richardson with said Haddock, and also bonds of other parties deposited in like manner and for the same purpose; that said Haddock on that occasion gave to his clerk, one S. Floyd Hoard, an order upon said Crandall for the delivery to him of the said bonds, and the said Hoard and said Smith on the evening of that day went from Elmira to Rochester, where the said Richardson proposed to meet said Haddock at that time; that the said Smith and the said Hoard met Richardson the next morning, and that said Smith then endeavored to procure from the said Richardson the said telegrams, letters and papers hereinbefore stated, and others tending to show the corrupt arrangement between said Haddock and said Richardson in relation to recruiting, and among other corrupt inducements thereto, assured him that said $20,000 of bonds for which said Hoard had an order, would, if surrendered by said Crandall, be given up by said Haddock to Richardson; that immediately after his return to Utica the said Smith, on the fifth or sixth day of March, at the request of said Richardson, returned to Elmira; that on this occasion said Smith took a written

memorandum prepared by said Collins, the clerk of said Richardson, containing several requests, to be presented to said Haddock on behalf of said Richardson, to wit (substantially):

1. To grant furloughs to three men put in by Richardson (and who were deserters.)

2. To send a guard to Utica.

3. To allow said Crandall to muster men for other districts.

4. To direct Crandall to give up the said $20,000 bonds to Richardson.

5. To have certain credits allowed to Richardson.

That before going to Elmira on this occasion, the said Smith received such memorandum in writing, and took it with him; that he there arranged at Elmira for a personal interview between the said Haddock and Richardson at some future day, which was afterwards arranged by telegraph by and between said Smith and Richardson, and took place at the Osborne House in Rochester on the tenth day of March thereafter; that the said Smith was there and occupied the same room with said Haddock; that on this occasion it was arranged between the said Haddock and Richardson that (among other things) said Richardson, in consideration of favors from said Haddock, was to send him by said Smith the sum of $5,000.

That said Smith and Richardson returned to Utica, and soon thereafter, to wit: on the 13th day of March, the said Richardson, by the consent and with the knowledge of said Smith, caused a telegram to be sent from Rome to said Haddock, requesting him to order Major Beadle, then provost marshal at Utica, to muster men for Oswego, to which the following answer was returned, viz:

"ELMIRA, *March*, 10, 1865.

GEORGE W. SMITH, *County Judge:*

I have given directions as requested by you.

JNO. A. HADDOCK."

That afterwards, and on or about the 16th day of March, 1865, the said Richardson gave to said Smith, in his office, the sum of $5,000, in seven-thirty notes, to take to Haddock pursuant to the aforesaid arrangement at Rochester. That said Smith saw Haddock on the 18th day of March, and exhibited the said bonds to him, that he had at the same time the aforesaid memorandum given him by said Collins at Utica. Afterwards another meeting was arranged by telegraph, and was had at Canandaigua between said

Smith and Haddock on said Richardson's business. Haddock had declined to receive the $5,000, and Smith had returned the money to Richardson.

The said Haddock had, besides the said telegrams and papers hereinbefore particularly referred to and set forth, sent to said Richardson various other letters and telegrams, tending to implicate him and furnish evidence of his misconduct in his said office, and to subject him to military censure and punishment. That the said Haddock desired to recover and suppress such papers and evidence. That he procured the said Smith to endeavor to recover the said papers from said Richardson. That said Smith at the time when he was pretending to act as the friend and counsel of said Richardson, was likewise acting for said Haddock, and on his retainer and employment in endeavoring to procure from said Richardson such papers with a view to suppress such evidence.

That for the services in behalf of said Richardson hereinbefore set forth, and in pursuance of the aforesaid scheme and arrangement, the said Smith demanded of the said Richardson the sum of two thousand dollars.

The President then put the question to each senator "How say you, is the sixth charge against the accused proven?"

To which each senator arose in his place and responded with the following result:

Proven: Messrs. Barnett, Bennett, Campbell, Collins, E. Cornell, Folger, Gibson, Godard, Humphrey, Kline, LaBau, Lent, O'Donnell, White, Wilbur and Wolcott, 16.

Not Proven: Messrs. Crowley, H. C. Murphy, T. Murphy, Sessions, Stanford, Sutherland and Williams, 7.

The clerk then proceeded to read the 7th charge as follows:

7th. That the said George W. Smith did, while holding said office at Utica in the said county, on or about the 16th day of March, 1865, receive from one Aaron Richardson, a person then engaged in the business of bounty broker, the sum of five thousand dollars in seven-thirty government notes, upon the understanding and for the purpose of offering the same to the said John A. Haddock, then acting Assistant Provost-Marshal General of the Western Division of New York, as a bribe for favors granted or to be granted to said Richardson, and did knowingly and corruptly bear and offer the said bribe to the said Haddock for the purpose aforesaid.

THE PRESIDENT then put the question to each senator "How say you, is the seventh charge against the accused proven?"

To which each senator arose in his place and responded with the following result:

Proven: Messrs. Barnett, Bennett, Campbell, Collins, E. Cornell, Gibson, Godard, LaBau, O'Donnell, White, Wilbur and Wolcott, 12.

Not Proven: Messrs. Crowley, Folger, Humphrey, Kline, Lent, H. C. Murphy, T. Murphy, Sessions, Stanford, Sutherland and Williams, 11.

The clerk then read the eighth charge, as follows:

8th. That the said George W. Smith, being such county judge as aforesaid, did heretofore, to wit, on the the 10th day of March, 1865, and at other times, at Utica aforesaid, and also at Rochester, endeavor to procure from the said Aaron Richardson certain letters and telegrams, addressed and sent to him, and certain other paper writings delivered to him by the said John A. Haddock, which papers tended to prove that the said Haddock had been guilty of misconduct and maladministration in his office of acting Assistant Provost-Marshal General of the Western Division of New York, with a view to suppress the evidence contained in said papers, and to screen said Haddock from just censure and punishment, he, the said Smith, well knowing the character and general contents of said papers, and the purposes for which their return was sought.

THE PRESIDENT then put the question to each of the senators, "How say you, is the eighth charge prefered against the accused proven?"

To which each senator arose in his place and responded with the following result:

Proven: Messrs. Barnett, Bennett, Campbell, Collins, Cornell, Folger, Gibson, Godard, Humphrey, Kline, LaBau, H. C. Murphy, O'Donnell, White, Wilbur, Williams and Wolcott, 17.

Not Proven: Messrs. Crowley, Lent, T. Murphy, Sessions, Stanford and Sutherland, 6.

The Clerk then proceeded to read the ninth charge, as follows:

9th. That the said Geo. W. Smith, being county judge as aforesaid, habitually neglected the duties of said office, and was unreasonably absent from his office, without any sufficient reason or excuse, and that he was engaged, either for himself or others, in the business of furnishing recruits and substitutes, and bounty

brokerage, a business inconsistent with the proper discharge of the duties of his place, and to the great loss and detriment of persons having business before him as county judge, or in the county court of said county; that such neglect has extended through the whole of his term as county judge.

The PRESIDENT then put to each Senator the question: "How say you is the ninth charge against the accused proven?" To which each Senator arose in his place, and responded, with the following result:

Not Proven.—Messrs. Barnett, Bennett, Campbell, Collins, E. Cornell, Crowley, Folger, Gibson, Godard, Humphrey, Kline, La Bau, Lent, H. C. Murphy, T. Murphy, O'Donnell, Sessions, Stanford, Sutherland, White, Wilbor, Williams and Wolcott, 23.

The PRESIDENT then put the question:

"Shall George W. Smith be removed from his office of county judge of Oneida county, for the cause stated in the items of the charges preferred against him, which you have found proven?" To which each Senator arose in his place, and responded, as follows:

AYES.—Messrs. Barnett, Bennett, Campbell, Collins, E. Cornell, Crowley, Folger, Gibson, Godard, Humphrey, Kline, La Bau, Lent, T. Murphy, O'Donnell, Sessions, White, Wilbor, Williams and Wolcott, 20.

NAYS.—Messrs. H. C. Murphy, Stanford and Sutherland, 3.

MR. GIBSON moved that each Senator be permitted to place upon the journal his reasons for the votes which he has given, which was carried.

On motion, the Senate adjourned.

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